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In the Supreme Court of the United States

OCTOBER TERM, 1970.

No. _____.

ATLAS ENGINE WORKS, INC.,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

PETITION FOR A WRIT OF CERTIORARI To the United States Court of Appeals For the Sixth Circuit.

Petitioner, Atlas Engine Works, Inc., petitions that a writ of certiorari issue to review a judgment of the United States Court of Appeals for the Sixth Circuit denying a petition for review and enforcing an order of the National Labor Relations Board.

OPINIONS BELOW.

The judgment of the Court of Appeals (App. B, *infra*, pp. 2a-3a) following the Board's supplemental decision is reported at 435 F.2d 558. The Board's supplemental decision and order (App. C, *infra*, pp. 4a-9a) is reported at 181 NLRB No. 13. The order of remand of the United States Supreme Court is reported at 395 U.S. 828. The initial opinion of the Court of Appeals (App. H, *infra*, pp. 16a-18a) is reported at 396 F.2d 775. The Board's original decision and order (App. I, *infra*, pp. 19a-20a) is reported at 163 NLRB No. 61.

JURISDICTION.

The judgment of the Court of Appeals for the Sixth Circuit was entered on December 28, 1970, and a timely petition for rehearing and suggestion for hearing in banc was denied on January 27, 1971 (App. A, *infra*, p. 1a). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED.

May the National Labor Relations Board, after finding that an employer has committed unfair labor practices and upon remand from this Court for reconsideration in light of *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969), properly refuse to consider the currently existing electoral atmosphere, including an 82% turnover in employees and a lapse of five years since the unfair labor practices, and instead impose a bargaining order based solely upon the effects of the unfair labor practices on the employees at the time of the violations.

STATUTE INVOLVED.

The relevant provisions of the National Labor Relations Act, as amended, 61 Stat. 136, 29 U.S.C. 151, et seq., are set forth in App. K, *infra*, pp. 85a-87a.

STATEMENT OF THE CASE.

A. THE FACTS.

The Company is an Ohio corporation engaged in the precision machining of crankshafts. It operates a plant near Gibsonburg, Ohio, and in 1965, employed about 175 people (J.A. 902-903).[1]

Commencing with an organizational committee meeting on June 9, 1965, the Union conducted a vigorous eight week campaign for the organization of the Company's 169 employee unit (J.A. 576-577). The Union held at least six further organizational committee meetings and four general open meetings (J.A. 579-582). Handbilling took place on six occasions and non-employee organizers visited the premises three times. At least one letter was mailed to all employees (J.A. 783-784).

On Friday, July 16, 1965, the Company received a written demand for recognition based upon a claim of authorization cards from a majority of the employees (J.A. 731-732). On that date, the Company's president and personnel director met and discussed the question of recognizing the Union on the basis of its written demand. They decided that they could not honor the Union's demand because of their experience with two prior organizational campaigns and because they had been informed that certain employees had been threatened and others had been the objects of misrepresentation as to the purpose of the cards (J.A. 427, 738-744, 877-880). The Company denied recognition the following Monday, July 19, 1965, acknowledging the right of its employees to "join or refrain from joining unions" and offering its

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[1] References designated "J.A." are to the joint appendix in the initial case before the Court of Appeals, No. 17,881. A copy of the joint appendix has been filed with the Clerk.

full cooperation in a Board-conducted election, a position it had taken in the prior two campaigns (J.A. 882).

In the consent election held on August 6, 1965, the employees voted 81 to 67 for "no union" (J.A. 26). Having lost the election, the Union proceeded to file unfair labor practice charges against the Company.

B. THE INITIAL DECISIONS OF THE BOARD AND THE COURT OF APPEALS.

The initial Complaint against the Company charged a number of Section 8(a)(1) violations. Subsequently, an amended Complaint included allegations charging a violation of Section 8(a)(5). The Board adopted the Trial Examiner's findings of fact, conclusions and recommendations (J.A. 60-61a). The Board found, in adopting in total the Examiner's Decision: (1) that the Company violated Section 8(a)(1) of the Act in a number of respects, and (2) that the Company refused to recognize and bargain with the Union, thereby violating Section 8(a)(5) of the Act because 88 of its 169 employees in the bargaining unit, a majority of three, had validly designated the Union as their bargaining agent by signing and delivering to the Union authorization cards by the time the Union had demanded recognition and because the Company's campaign in opposition to the Union coupled with its subsequent unfair labor practices gave rise to the inference that its initial refusal to recognize and bargain was not made in good faith (J.A. 54-55).

The Court of Appeals, in an opinion devoted primarily to the question of the validity of the authorization cards supporting the Union's majority claim, enforced the Board's order (App. H, *infra*, pp. 16a-18a).

C. REMAND BY THIS COURT.

A petition for a writ of certiorari was filed with this Court and, following the decision of this Court in *NLRB v. Gissel Packing Co., supra,* the petition was granted, the judgment of the lower court was vacated, and the case was remanded to the Board "for further consideration in light of . . . *Gissel.*" 395 U.S. 820 (App. G, *infra,* p. 15a).

D. THE SUPPLEMENTAL BOARD AND COURT DECISIONS.

In support of its Statement of Position before the Board and its Motion To Reopen the Record (App. D, *infra,* pp. 10a-11a), the Company filed an affidavit showing that of the 169 employees in the bargaining unit in 1965, only 30 remained as employees as of December, 1969 (App. E, *infra,* pp. 12a-13a).

On February 9, 1970, the Board issued its Supplemental Decision and Order, in which it recited that the unfair labor practices committed by the Company were of such a pervasive character as to make it unlikely that their coercive effects would be neutralized by conventional remedies, despite the substantial employee turnover and the passage of five years. The Board stated, without supporting discussion, that employee sentiment as expressed in 1965 through a three-card majority of authorization cards (out of 169 employees) is a more reliable measure of employee desires on the issue of representation than an election would be (App. C, *infra,* pp. 4a-9a).

Upon review of the Supplemental Decision of the Board, the Court of Appeals granted enforcement (App. B, *infra,* pp. 2a-3a).

REASONS FOR GRANTING THE WRIT.

This case presents an important issue in the administration of the National Labor Relations Act: whether the Board may properly ignore the current employee complement and electoral atmosphere, and instead impose a bargaining order based solely upon the effects of unfair labor practices on an employee complement as it existed at the time of the unlawful acts. Additionally, this case involves the proper interpretation and application of *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969), where this Court has entered a remand order requiring the Board to make specific findings and the Board has refused to consider the only evidence pertinent to such findings. Further, the conflict between the Circuit Courts on this issue requires resolution by this Court.

A. The decisions of the Board and the Court of Appeals violate the standards established by this Court in *Gissel* for the issuance of bargaining orders:

> "If the Board finds that the possibility of erasing the effects of past practices and of ensuring a fair election (or a fair rerun) by the use of traditional remedies, though present, is slight and that employee sentiment once expressed through cards would, on balance, be better protected by a bargaining order, then such an order should issue . . ." [2]

These standards require the Board to determine employee sentiment and the effects of past practices at the time the Board issues or reaffirms a bargaining order.

The Board, however, has taken the position that in determining the propriety of a bargaining order it need give no consideration to employee turnover, the passage of time, remedial measures taken by the employer, or any other change in circumstances bearing on the current

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[2] 395 U.S. at 614.

electoral atmosphere.[3] While this approach may be motivated out of administrative convenience, it constitutes an improper interpretation of *Gissel* and ignores the total concern for employee free choice which is the principal objective of the National Labor Relations Act, and which underlies the *Gissel* standards.

In the instant case, of a present employee complement of 202 eligible employees, a total of 172 employees have never had the opportunity to vote in a secret election to determine whether they wish to be represented by this or any other Union. Only 11 of the 202 employees had signed union authorization cards. If the will of these 11 is to determine the representation to be afforded 202 employees, of which 172 have never even expressed themselves, by cards or otherwise, then employee free choice is indeed a fiction.

The Board's stated reasons for its position are that a contrary policy would impose great administrative burdens and may encourage employers to delay in order to profit from their own misconduct. While these considerations may be present in new cases arising after *Gissel*, they are not present with respect to those cases, such as the instant one, remanded following *Gissel* for the specific purpose of requiring a reevaluation of current conditions. In those cases, the Board was compelled by its own change of position[4] to reopen the record and reconsider these issues. Thus, any delay which results from

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[3] *Henry Colder Company*, 184 N.L.R.B. No. 13 (June 30, 1970); *Vaca Valley Bus Lines*, 179 N.L.R.B. No. 107 (Nov. 19, 1969). See also, *NLRB v. American Cable Systems, Inc.*, 427 F.2d 446 (5th Cir.), *cert. denied*, 400 U.S. 957 (1970); *NLRB v. Clark's Gamble Corp.*, 422 F.2d 845 (6th Cir.), *cert. denied*, 400 U.S. 868 (1970) (Justices Black, White and Blackman dissenting).

[4] 395 U.S. at 591.

the remand process is not the fault of the employer. Further, the Board should not be heard to complain of administrative burdens when its own actions are the direct cause of those burdens.

The need for a ruling by this Court on the issue at hand is apparent from the large number of recent cases in which substantial employee turnover has been ignored by the Board.[5] Additionally, in view of the disagreement among the Circuit Courts on this question, employers will continue to challenge the Board's refusal to consider the contemporary need for bargaining orders, with resulting uncertainty in the law.

B. The decision below clearly conflicts with the Fifth Circuit's decision in *NLRB v. American Cable Systems, Inc.*, 427 F.2d 446 (5th Cir.), *cert. denied*, 400 U.S. 957 (1970). There, the Circuit Court held that the Board's supplemental findings upon remand were insufficient under the teachings of *Gissel* to justify a bargaining order. The Court observed that "on remand the Board refused to look at the contemporary necessity for such an order, satisfying itself with a jejune regurgitation of the Company's 1965 waywardness. We deem such findings insufficient under the teachings of *Gissel* to justify a 1970 bargaining order." [6]

The Board's supplementary findings reviewed by the Fifth Circuit parallel those in the instant case and thus, the holding in *American Cable* is in absolute conflict with the decision of the Sixth Circuit in this case.

The decision in this case is also in conflict with the Sixth Circuit's earlier decision in *NLRB v. Clark's Gamble Corp.*, 422 F.2d 845, *cert. denied*, 400 U.S. 868 (1970).

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[5] See note 3, *supra*.

[6] 427 F.2d at 448.

In that case, the Court, on remand from this Court after *Gissel*, directed the Board to assess employee turnover and affirmed its prior order requiring the Board to conduct a rerun election if it found a "substantial" turnover on remand.[7]

The Board itself has recognized the necessity for a resolution of the divergent positions now existing among the circuits[8] and among separate panels within the circuits.[9] These conflicts should be resolved by this Court.

CONCLUSION.

For the foregoing reasons, Petitioner respectfully submits that a writ of certiorari should be granted.

Respectfully submittted,

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[7] 407 F.2d at 202.

[8] See the Board's petitions for a writ of certiorari in *NLRB v. American Cable Systems, Inc.*, No. 737, October Term, 1970; and *NLRB v. Clark's Gamble Corp.*, No. 265, October Term, 1970.

[9] *Cf. NLRB v. American Cable Systems, Inc.*, 427 F.2d 446 (5th Cir.), *cert. denied*, 400 U.S. 957 (1970), *with American Art Industries, Inc. v. NLRB*, 75 LRRM 2352 (5th Cir.), *cert. denied*, 39 U.S.L. Week 3357 (February 23, 1971).

APPENDIX A.

ORDER OF THE COURT OF APPEALS DENYING REHEARING.

(Filed January 27, 1971.)

No. 20,268.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT.

ATLAS ENGINE WORKS, INC.,
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

ORDER.

Before: PECK AND BROOKS, Circuit Judges, and McALLISTER, Senior Circuit Judge.

The petition of the petitioner for rehearing and suggestion of rehearing in banc has been considered. None of the judges of this Court who are in regular active service has favored ordering consideration in banc.

It is ORDERED that the petition is denied.

Entered by order of the Court.

CARL W. REUSS,
Clerk.

APPENDIX B.

DECISION OF THE COURT OF APPEALS.

(Filed December 28, 1970.)

No. 20,268.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT.

ATLAS ENGINE WORKS, INC.,
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

ORDER.

Before: PECK AND BROOKS, Circuit Judges, and McALLISTER, Senior Circuit Judge.

Atlas Engine Works, Inc. has filed its petition to review and set aside a Supplemental Decision of the National Labor Relations Board and the Board on cross-application seeks enforcement of its original order.

On October 30, 1969, this Court issued an order remanding the Board's order in the original proceeding reported at 163 N.L.R.B. 486. The Board's Supplemental Decision pursuant to the remand is reported at 181 N.L.R.B. No. 13. Pursuant to its Supplemental Decision, the Board affirmed its original order. This original order had already been ordered enforced by this Court, 396 F.2d 775 (6th Cir. 1968), however certiorari was granted and the case remanded with instructions to remand it to the Board for further consideration in light of *N.L.R.B. v. Gissel Packing Company,* 395 U.S. 575 (1969).

We have considered the entire record, the briefs and oral arguments of counsel and conclude that the original and supplemental findings of fact of the Board are supported by substantial evidence on the record as a whole.

The company's petition to review and set aside the Supplemental Decision of the Board must be denied and enforcement of the order of the Board must be granted. It is so ORDERED.

Entered by order of the Court.

CARL W. REUSS

Clerk.

APPENDIX C.

SUPPLEMENTAL DECISION AND ORDER OF THE NATIONAL LABOR RELATIONS BOARD.

(Entered February 9, 1970.)

Case 8-CA-3990.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

ATLAS ENGINE WORKS, INC.

and

TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL #20, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

SUPPLEMENTAL DECISION AND ORDER.

On March 20, 1967, the National Labor Relations Board issued its Decision and Order in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in unfair labor practices in violation of Section 8(a) (1) and (5) of the National Labor Relations Act, as amended, and ordered that the Respondent cease and desist therefrom and take certain affirmative action to remedy the unfair labor practices.[1] Thereafter, on June 28, 1968, the United States Court of Appeals for the Sixth Circuit affirmed the Board's findings that the Respondent had engaged in conduct violative of Section 8(a) (1) and (5) and granted enforcement of the Board's order.[2]

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[1] 163 NLRB 486.

[2] 396 F.2d 775 (C.A. 6, 1968).

On June 16, 1969, the Supreme Court of the United States issued its opinion in *N.L.R.B. v. Gissel Packing Company*[3] in which it laid down certain guidelines relative to the propriety of finding violations of Section 8(a) (5) and issuing orders to bargain upon such violations or violations of other sections of the Act. On June 23, 1969, the Supreme Court granted the Respondent's petition for certiorari and remanded the case to the Court of Appeals for the Sixth Circuit with instructions to remand the case to the Board for further consideration in the light of its decision in *Gissel*.[4] Accordingly, on October 30, 1969, the Sixth Circuit remanded the case for further consideration in the light of *Gissel*. Pursuant to the Court's remand the Board issued a Notice inviting the parties to submit statements of position with respect to the application of *Gissel* to the proceeding. The Respondent, the Charging Party, and the General Counsel filed statements in support of their respective positions.[5] We have again reviewed the entire record, including the statements of position, affirm the Board's original finding and order in this respect for the reasons stated below.

In its decision of March 20, 1967, the Board found that the Respondent, both before and after it denied the Union's request for recognition and bargaining, engaged in the following conduct in violation of Section 8(a) (1) of the Act: coercively interrogated its employees as to their own or fellow employees' union sympathies and leanings; threatened economic reprisals against employees for

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[3] 395 U.S. 575.

[4] 395 U.S. 828.

[5] Respondent's request for oral argument is denied. Respondent's position on the remand issues is adequately presented in its Statement and the present record is appropriate for the resolution of those issues.

engaging in union activities; conditioned job advancement upon abandonment or renunciation of union activity; created an impression among the employees of surveillance of union activities; and promulgated, maintained and enforced a no-solicitation and no-distribution rule. With respect to the 8(a) (5) allegation of the complaint, it was found (1) that the Union had obtained valid authorization cards from a majority of employees in an appropriate unit at the time of its demand for recognition and bargaining and that the Union was thus entitled to represent the employees for collective-bargaining purposes, and (2) that the Respondent's refusal to bargain with the Union thereafter was motivated not by a good-faith doubt of the Union's majority status, but by a desire to gain time in which to dissipate that representative status. The Board concluded that the Respondent's refusal to bargain violated Section 8(a) (5) and (1) of the Act and issued a bargaining order to remedy the unfair labor practices.

The Supreme Court, in setting forth general principles applicable to the issuance of bargaining orders, held that the Board has authority to issue such orders to remedy unfair labor practices "so coercive that, even in the absence of a Section 8(a) (5) violation, a bargaining order would have been necessary to repair the unlawful effect of those [unfair labor practices]." [6] In addition, the Court approved the Board's authority to issue a bargaining order "* * * in less extraordinary cases marked by less pervasive practices which nonetheless still have the tendency to undermine majority strength and impede the election processes." [7] In such situation, the Board must examine the nature and extent of the employer's unlawful conduct

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[6] *N.L.R.B. v. Gissel Packing Company,* 395 U.S. 575, 615.

[7] *Id.* at 614.

and ascertain the likelihood that the use of traditional remedies would ensure a fair election. The Court instructed the Board to decide whether "* * * even though traditional remedies might be able to ensure a fair election there was insufficient indication that an election * * * would definitely be a more reliable test of the employees' desires than the card count taken before the unfair labor practices occurred." [8]

We have reexamined the facts of this case with these instructions in mind. The record shows, as the Board has heretofore found, that the Respondent's employees had designated the Union as their bargaining representative by means of unambiguous authorization cards.[9] In response to the Union's organization efforts, however, the Respondent engaged in a systematic campaign to identify union adherents and to destroy the Union's majority by means of coercion, interference and threats, including numerous threats of economic reprisal for support of the Union. Its unfair labor practices were so coercive in nature as to require, even in the absence of an 8(a) (5) violation, a bargaining order to repair their effect. We find, in any event, that the Respondent's unfair labor practices were of such a pervasive character as to make it unlikely that their coercive effects would be neutralized by conventional remedies so as to produce a fair election. In these circum-

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[8] *Id.* at 616.

[9] We reject the Respondent's contention that the Court's discussion in *Gissel* of the Board's rules regarding challenges to cards on the basis of misrepresentations as to their purpose in any way warrants disturbance of the Trial Examiner's rulings herein. We note that the Court specifically approved the rules announced in the *Cumberland Shoe Co.*, 144 NLRB 1268, enfd. 351 F.2d 917 (C.A. 6, 1965) and *Levi Strauss*, 172 NLRB No. 57, cases. Our review of the challenges herein leads us to the conclusion that the Trial Examiner's resolution of the challenges was governed by the standard approved by the Court.

stances, we believe that employee sentiment as expressed through the authorization cards is a more reliable measure of their desires on the issue of representation in this case than an election would be. We therefore find that by refusing to bargain with the Union and engaging in the unfair labor practices described above, Respondent violated Section 8(a) (5), and that to effectuate the policies of the Act, a bargaining order is required to remedy its refusal to bargain as well as its other unfair labor practices.[10]

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[10] The Respondent contends that in view of length of time since the original election and the more than 80 percent turnover of personnel in that period, a rerun election rather than a bargaining order is the most appropriate remedy in the instant case. We do not agree. In effect, Respondent seeks to benefit from its own illegal actions in thwarting its former employees' desire for representation by advocating the right of its present employees to refrain from such activities. However, delay is inherent in Board litigation under the scheme of the Act. In view of our finding of pervasive unfair labor practices committed by the Respondent, to withhold a bargaining order pending a new election, which may again be interfered with by Respondent, is to put a premium on protracted litigation by an employer. *Frito-Lay, Inc.*, 169 NLRB No. 115; *Thrift Drug Company*, 167 NLRB No. 57. Under similar circumstances the Ninth Circuit recently stated:

> "* * * The delay is not the fault of the union; if it is anyone's fault, it is that of the employer. But regardless of fault, it is an unfortunate but inevitable result of the process of hearing, decision and review prescribed in the Act. And to deny enforcement with or without remand for reconsideration on the basis of facts occurring after the Board's decision, is to put a premium upon continued litigation by the employer; it can hope that the resulting delay will produce a new set of facts, as to which the Board must then readjudicate * * *
>
> Emphasis is given to the rapid turnover in the employer's personnel as a reason for not enforcing the order. But we think that this is a reason to enforce. Otherwise there will be an added inducement to the employer to indulge in unfair labor practices in order to defeat the Union in an election. He will have as an ally, in addition to the attrition of union support inevitably springing from delay in accomplishing results, the fact that turnover itself will help

(Continued on following page)

We accordingly, reaffirm the unfair labor practice finding and the remedy provided in the original Decision and Order.

SUPPLEMENTAL ORDER.

In view of the foregoing, and on the basis of the record as a whole, the National Labor Relations Board affirms its Order of March 20, 1967, in this proceeding.

Dated, Washington, D. C. February 9, 1970.

JOHN H. FANNING, *Member,*
GERALD A. BROWN, *Member,*
HOWARD JENKINS, JR., *Member,*
National Labor Relations Board.

(SEAL)

(Continued from preceding page)

him, so that the longer he can hold out the better his chances of victory will be * * *" *N.L.R.B. v. L.B. Foster Company,* F.2d , (C.A. 9, October 31, 1969, No. 23,121).

Accordingly, Respondent's Motion for Remand and To Reopen The Record, which is founded on the above contentions, is denied.

APPENDIX D.

MOTION FOR REMAND AND TO REOPEN THE RECORD.

(Filed December 15, 1969.)

Cases 8-CA-3990, 8-RC-6028, 8-RM-428.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

ATLAS ENGINE WORKS, INC.

and

TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL #20, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

MOTION FOR REMAND AND TO REOPEN THE RECORD.

Atlas Engine Works, Inc., Respondent herein, pursuant to Section 102.48(d) (1) of the Board's Rules and Regulations, moves the Board to remand this matter to the Trial Examiner for the purpose of reopening the record to adduce new evidence and to make modified and additional findings of fact and recommendations. This motion is based upon the attached affidavit of T. W. Clark, President of Respondent, and the decision of the U. S. Supreme Court in *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969), resulting in the remand of this case to the Board for reconsideration.

Reopening of the record is necessary in order that new evidence may be introduced relating to the following:

1. Identification of the present complement of employees consistent with the affidavit attached hereto. [Such evidence would require a finding that a bargaining

order is an inappropriate remedy in this case in that the card signers who remain as employees of the Respondent constitute an extremely small minority of the Respondent's present employees and thus the employees' right of free choice will be better protected by more traditional remedies.]

2. The absence of unfair labor practices since the election herein and the curative effect of the passage of time upon the effects of past unfair labor practices. [Such evidence, in addition to that adduced pursuant to paragraph 1 above, would require a finding that a bargaining order is not an appropriate remedy.]

Additionally, Respondent moves that this case be remanded to the Trial Examiner for reconsideration of the validity of the authorization cards in light of the Supreme Court's holding in *Gissel Packing, supra,* that the Board may not sanction "an approach any more rigid than that in General Steel." Id. at 609. Such an approach was taken in this case and therefore Respondent is entitled to file a brief with the Trial Examiner, who should be instructed to reevaluate his findings in light of *Gissel.* Such findings can only be made by the Trial Examiner, who heard the testimony first hand.

Respectfully submitted,

SHUMAKER, LOOP & KENDRICK,
FRANCIS J. GALLAGHER,
ROLF H. SCHEIDEL,
Attorneys for Respondent.

APPENDIX E.

AFFIDAVIT OF T. W. CLARK.

(Filed December 15, 1969.)

Cases 8-CA-3990, 8-RC-6028, 8-RM-428.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

ATLAS ENGINE WORKS, INC.
and
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL #20, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

AFFIDAVIT.

STATE OF OHIO,
COUNTY OF LUCAS, SS:

T. W. CLARK, having been duly sworn, deposes and says:

1. That he is the President of Atlas Engine Works, Inc., respondent herein, and has been its President at all relevant times herein.

2. That on July 17, 1965, there were 169 employees on the respondent's payroll in the bargaining unit found appropriate.

3. That on December 4, 1969, there were 30 employees on the respondent's payroll who were among the 169 employees on the payroll on July 17, 1965. The other 139 employees have terminated their employment with respondent.

4. That on December 4, 1969, there were 202 employees on the respondent's payroll in the bargaining unit found appropriate.

5. That of the 87 employees who signed authorization cards which the Board has determined to be valid cards, 11 employees were still on the respondent's payroll on December 4, 1969, the remaining 76 having terminated their employment subsequent to the 1965 election.

T. W. CLARK.

(Jurat omitted.)

APPENDIX F.

ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

(Entered October 30, 1969.)

No. 17,881.

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT.

ATLAS ENGINE WORKS, INC.,

v.

NATIONAL LABOR RELATIONS BOARD,

ORDER.

Before PHILLIPS, McCREE and COMBS, Circuit Judges.

In compliance with the order of the Supreme Court of the United States, 395 U.S. 828, it is ORDERED that this case be remanded to the National Labor Relations Board for further consideration in the light of *N.L.R.B. v. Gissel Packing Co., Inc.*, 395 U.S. 575.

Entered by order of the Court.

CARL W. REUSS,

Clerk.

APPENDIX G.

ORDER OF THE SUPREME COURT.

SUPREME COURT OF THE UNITED STATES.
October Term, 1968.

ATLAS ENGINE WORKS, INC., *v.* NATIONAL LABOR RELATIONS BOARD,

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

No. 598. Decided June 23, 1969*

PER CURIAM.

The petitions for writs of certiorari are granted, the judgments are vacated and the cases are remanded to the respective United States Courts of Appeals with instructions to remand the cases to the National Labor Relations Board for further consideration in light of *N. L. R. B. v. Gissel Packing Co., Inc.*, 395 U. S. ——, decided June 16, 1969.

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* Together with No. 906, *Thrift Drug Company of Pennsylvania v. N. L. R. B.;* No. 1213, *Lou DeYoung's Market Basket Inc. v. N. L. R. B.;* on petitions for writs of certiorari to the United States Court of Appeal for the Sixth Circuit; and No. 1273, *N. L. R. B. v. The Pembek Oil Corporation,* on petition for writ of certiorari to the United States Court of Appeals for the Second Circuit.

APPENDIX H.

DECISION OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

(Entered June 28, 1968.)

No. 17881.

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT.

ATLAS ENGINE WORKS, INC.,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

Before: PHILLIPS, McCREE and COMBS, Circuit Judges.

PHILLIPS, Circuit Judge. The decision and order of the Board, reported at 163 N.L.R.B. No. 61, required the employer to bargain with the Union upon the ground that the Union had a majority of valid authorization cards on the day that it demanded recognition as bargaining agent. The Union later lost a Board supervised election by a vote of 81 to 67.

The employer has filed a petition for review to set aside the Board's order. The Board has filed a cross-petition for enforcement.

The Board held that the employer was guilty of various unfair labor practices in violation of § 8(a) (1) of the Act, which dissipated the Union's majority between the time of its demand for recognition and the day of the election. It further held that the employer violated § 8 (a) (5) of the Act by refusing to bargain with the Union after

a majority of the employees had designated the Union as their bargaining representative.

The authorization cards are unambiguous.[1] No reference to an election appears at any place on the face of the cards.

During the organizational campaign the Company's personnel director spoke to both shifts of employees, warning that the cards being circulated by the Union were membership cards, not election authorization cards. He stated: "Membership cards mean just that—membership." He asserted that the Union may be trying to obtain recognition without an election, saying: "They have not told you the kind of card which you are signing. The card which they are asking you to sign is a bona fide acceptance of membership in Teamsters Local Number 20."

At two mass meetings of employees the Union's business agent explained three alternative methods by which the Union might secure recognition if sufficient authorization cards were signed: (1) by an impartial third-party check of the cards; (2) by a private election under the auspices of local citizens; or (3) by a Board representa-

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[1] The cards used by the Union contained the following language:

> "TEAMSTERS LOCAL 20 ORGANIZING COMMITTEE
> Affiliated with the I. B. of T., C., W. & H. of Am.
>
> "I HEREBY ACCEPT MEMBERSHIP IN TEAMSTERS LOCAL NO. 20, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and of my own free will hereby authorize the above Union to act for me as a collective bargaining agency in all matters pertaining to rates of pay, wages, hours of employment, or other conditions of employment."

The card then provided spaces for the employee to both print and sign his name, and for date, address, telephone number, name of employer, social security number, class of work, and hourly rate. At the bottom appeared the legend: THINK UNION — TALK UNION — BE UNION.

tion election. The Union later sought recognition through the first and third alternatives.

In demanding recognition both orally and in writing, the Union claimed that it possessed authorization cards signed by a majority of employees in the unit. In responding to the Union's demand, the company expressed no doubts as to the Union's majority status. The record establishes that the Union held a majority of signed authorization cards on the day it demanded recognition.

The Board made a finding of fact to the effect that the Company's rejection of the Union's demand was not the product of a good faith doubt, but was motivated by a desire to gain time "to stifle the union"; that the Company immediately set in motion a systematic campaign to prevent collective bargaining and to insure continuation of the non-union status it had enjoyed for twenty years; and that the dissipation of the Union's majority was accomplished by numerous unfair labor practices outlined in detail in the Board's reported decision.

We find that the decision and order of the Board are supported by substantial evidence on the record as a whole and that enforcement should be granted. *N.L.R.B. v. Swan Super Cleaners, Inc.*, 384 F. 2d 609 (6th Cir.); *Dayco Corp. v. N.L.R.B.*, 382 F. 2d 577 (6th Cir.); *N.L.R.B. v. Cumberland Shoe Corp.*, 351 F. 2d 917 (6th Cir.), *N.L.R.B. v. Winn-Dixie Stores, Inc.*, 341 F. 2d 750, cert. denied, 382 U S. 830.

The company's petition to review and set aside the order of the Board is denied. Enforcement is granted.

APPENDIX I.

DECISION AND ORDER OF NATIONAL LABOR RELATIONS BOARD.

(Dated March 20, 1967.)

(163 NLRB No. 61.)

Cases 8-CA-3990, 8-RC-6028, 8-RM-428.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

ATLAS ENGINE WORKS, INC.
and
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL #20, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

On September 14, 1966, Trial Examiner Ivar H. Peterson issued his Decision in the above-entitled case, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, the Respondent filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions and brief, and the entire record in this case,

and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.[1]

ORDER.

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the Recommended Order of the Trial Examiner, and hereby orders that the Respondent, Atlas Engine Works, Inc., Gibsonburg, Ohio, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order.

IT IS FURTHER ORDERED that the petitions for certification of representatives, filed in Cases Nos. 8-RC-6028 and 8-RM-428 be, and they hereby are, dismissed, and that all proceedings held thereunder be, and they hereby are, vacated.

Dated, Washington, D. C., Mar. 20, 1967.

JOHN H. FANNING, *Member,*
HOWARD JENKINS, JR., *Member,*
SAM ZAGORIA, *Member,*
National Labor Relations Board.

(Seal)

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[1] Even if, *arguendo*, Richard H. Hughes were excluded from the unit as a temporary employee, the Union would still represent a majority of the employees in the appropriate unit.

APPENDIX J.

DECISION OF TRIAL EXAMINER OF NATIONAL LABOR RELATIONS BOARD.

Cases 8-CA-3990, 8-RC-6028, 8-RM-428.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

ATLAS ENGINE WORKS, INC.
and
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL #20, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

Before: IVAR H. PETERSON, *Trial Examiner.*

TRIAL EXAMINER'S DECISION.

STATEMENT OF THE CASE.

Upon charges duly filed on August 23, 1965, by Teamsters, Chauffeurs, Warehousemen and Helpers Local #20, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union, against Atlas Engine Works, Inc., herein called the Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for the Eighth Region, on November 4, 1965,[1] issued a complaint alleging that the Respondent had engaged in certain unfair labor practices violative of Section 8(a)(1) of the National Labor Relations Act. Thereafter, on November 16, an amended complaint was issued, adding allegations that the Respondent had unlawfully refused to

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[1] All dates refer to the year 1965 unless otherwise indicated.

bargain with the Union on and after July 15, thereby violating Section 8(a)(5) of the Act. By order simultaneously issued the unfair labor practice case was consolidated "for the purposes of hearing, ruling and decision by a Trial Examiner" with Cases Nos. 8-RC-6028 and 8-RM-428, in which the Board, by order dated November 3, had directed that a hearing be held on certain objections filed by the Union arising out of an election held on August 6 pursuant to a stipulation for certification upon consent election.[2] In its duly filed answer the Respondent admitted certain allegations of the complaint but denied the commission of any unfair labor practices.

Pursuant to notice, a hearing was held before me, Ivar H. Peterson, as duly designated Trial Examiner, at Fremont, Ohio, on various dates commencing January 19 and ending February 9, 1966. All parties were represented and participated in the hearing, Briefs filed by the General Counsel and the Respondent have been fully considered.

Upon the entire record in this consolidated proceeding, and my observation of the witnesses and their demeanor, I make the following:

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[2] The stipulation was executed on July 27 and approved by the Regional Director on July 28. The election was held on August 6, and resulted in the Union being defeated by a vote of 81 to 67. Thereafter, the Union filed timely objections to the conduct of the election and to the conduct affecting the results of the election. On September 30 the Regional Director issued his report on objections (amended October 1), in which he concluded that certain objections were without merit and should be overruled and that certain other objections raised issues warranting a hearing. On October 12 the Respondent filed exceptions to such of the Regional Director's findings, conclusions and recommendations as supported the Union's objections. The Board's order of November 3 adopted the Regional Director's recommendation that a hearing be held on certain objections.

FINDINGS OF FACT.

I. The Business of the Respondent.

The Respondent, an Ohio corporation with its principal office at Woodville, Ohio, maintains a plant at Gibsonburg, Ohio, with which this proceeding is concerned, where it is engaged in the manufacture of crankshafts and other machine work. From the Gibsonburg plant the Respondent annually ships products valued at in excess of $50,000 directly to points outside the State of Ohio. The Respondent admits, and I find, that it is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. The Labor Organization Involved.

The Union is a labor organization within the meaning of Section 2(5) of the Act.

III. The Unfair Labor Practices.

A. Interference, restraint and coercion.

1. Sequence of events; the Respondent's campaign to defeat the Union.

The Union began organizational efforts among the approximately 160 employees at the Respondent's Gibsonburg plant on June 9.[3] After a number of small group meetings and the solicitation of signatures to authorization cards, the first open meeting attended by some 40 or 45 employees was held on July 7. On this occasion Eugene Shumaker, business agent of the Union, explained three

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[3] Earlier unsuccessful attempts had been made by two other labor organizations, the Mechanics Educational Society of America in 1963 and the United Steelworkers of America in 1964. In a prior proceeding, *Atlas Engine Works, Inc.*, 129 NLRB 101, the Board found that the Respondent, in connection with organizational efforts of the United Automobile Workers in the fall of 1959, had discriminatorily discharged four employees and had engaged in other coercive conduct violative of its employees' self-organizational rights.

methods for obtaining recognition as collective bargaining representative if sufficient authorization cards were signed: first by means of a card check by some impartial third person, second he mentioned the possibility of a private election under the auspices of a labor-management-citizens committee, and finally a Board-conducted representation election. Shumaker made a similar explanation at the next mass meeting, on Sunday, July 11, which was attended by some 60 employees.

At about 2 p.m. on July 15, following another mass meeting on July 14 and the distribution of handbills at the plant gate on July 8 and 13, Donald Sarver, a business representative of the Union, telephoned Harold C. Warner, the Respondent's personnel director, claimed that the Union represented a majority of the Respondent's employees and requested a meeting for collective bargaining. Warner, the only participant in this conversation to appear as a witness, credibly testified that he in substance declined to grant recognition and told Sarver that the Union could petition the Board for an election. On the same day Sarver sent the Respondent a letter, received on July 16, claiming that the Union had been authorized as collective-bargaining representative by a majority in a defined unit, offering "to submit the authorization cards signed by your employees to an impartial person for examination and count," and requesting recognition as exclusive representative and the commencement of negotiations for a bargaining agreement at the earliest possible date. Warner wrote to Sarver on behalf of the Respondent on July 19, acknowledging the Union's claim of majority representation and desire to meet with representatives of the Respondent. Warner's letter continued:

> We have consistently recognized the right of our employees to join or refrain from joining unions.

There is however, a procedure established by law wherein our employees can exercise this right.

We are fully prepared to co-operate with the National Labor Relations Board through their due process of investigation in determining the validity of your allegation by having that agency conduct a secret ballot representation election.

On July 10, shortly after the Union's first general meeting on July 7, the Respondent's president, T. W. Clark, gave short speeches, using the same prepared text, to employees on the first and the second shifts. Clark stated that the employees had been called together "because of the union activity in the plant which has caused much concern amongst you," and that employees "have come to us wanting to know what to do." Referring to the solicitation of authorization cards, Clark said that because "there has been some pressure put on you to sign cards, we want to tell you that this is not compulsory." He asked that employees inform management "if anyone puts the pressure on you to sign with a threat, coercion or fears." Clark then proceeded to detail "a few facts," for the reason the Company had "hired many new people who are inexperienced, not only in machine shop operations, but in tactics such as a union campaign can involve." He then stated that "what the union is after" was dues, "and that is all they are after," and enumerated certain benefits enjoyed by employees which he said were attributable to the efforts of the Respondent and not those of any labor organization. He concluded as follows:

We have made great progress all along with the greatest in the last three years without a third party dictating.

We are adding on a Chrome Plating Department and a Heat Treat Department to further strengthen your company in a competitive field thus making your job stronger and more secure.

We hope nothing will happen to impede this progress. You do not have to sign these cards. We do not need a third party. We hope this has answered some of your questions.

Personnel Director Warner spoke to both shifts of employees on July 14, stating that the Union was not "being entirely honest" with the employees in its organizational efforts. Warner's prepared text reads in part as follows:

> During the past few days it has been reported that several people are being continually badgered and are being coerced into signing membership cards, and I repeat, membership cards and not authorization cards. Membership cards mean just that — membership. Authorization cards mean that if sufficient cards are signed, or 30%, that you can expect to have an election.
>
> Let me clarify this. We do not believe that the Teamsters are being entirely honest with you particularly at the beginning of their campaign to attempt to organize you people. They have not told you the kind of card which you are signing. The card which they are asking you to sign is a bona-fide acceptance of membership in Teamsters Local Number 20. . . .
>
> It appears that the Teamsters may be trying to avoid an election by imposing a union on you without having an election. This is contrary to the democratic principles which our country is based on. This is the type of union which is attempting to represent you. If they are starting out this way, what can you expect in the future?
>
> I can assure you that we are not in accord with the union's interpretation of democratic process. I am sure you desire an opportunity to think about the seriousness of union organization, and then, have an opportunity to cast your vote in the sanctity of a voting booth wherein no one but you will know how you vote.

During the afternoon of July 16, after the Respondent had received the Union's letter claiming a majority and requesting recognition, President Clark addressed the assembled employees. According to the text of his remarks, he stated:

> We have brought you together again this afternoon to bring you up to date on the union activity in your plant.
>
> Yesterday afternoon at 2 o'clock Mr. Don Sarver of Teamsters Local 20 called Mr. Warner asking us to meet with him to negotiate. We told him where to go (to the NLRB in Cleveland).
>
> You see, he wants to avoid the democratic process of each and every person having a vote in whether or not they want this union to represent them.
>
> These cards which some of you have signed are not an authorization for an election, but membership cards. It is the opinion of many who have signed cards that you were signing *for* a democratic election in the future. However, you were misled into signing membership cards and those who have signed are now full-fledged members of Teamsters Local 20.
>
> This afternoon we received a certified letter from Mr. Don Sarver . . . which confirms yesterday's telephone conversation.
>
> Many of you people have come to us for advice and it has been reported that statements have been made by some employees here attempting to organize you people that if you do not join the union you will be fired and if you have not been here six months the union doesn't want you and you will be separated. These are outright threats and should be brought to the attention of the company for your protection.
>
> You do not have to sign the cards and you do not have to join the union to keep your job. If the union has this power to fire employees, then what protection does anyone have? We certainly will not let anything like this happen to our employees. Manage-

ment, under all circumstances, is the only body having any authority to separate or discharge any employees.

In looking back three years ago when we had a union election in this plant, which the union lost, our production dropped about 60 per cent, and we lost three good customers. We were able to regain two of them, and Kalvinator is completely lost. So that they are not a customer today. This caused some layoffs . . . which we could not have.

We do not want this to happen this time. Please keep your production up, meet your quotas, and turn out good quality.

If anything happens to your production and quality, we will not have any customers, whether a union organization comes into the plant or not.

Also during the afternoon of July 16 Clark and Warner met to consider what steps would be taken by the Respondent to counter the Union's organization efforts. As Warner testified, they "decided on an active campaign of education, information and persuasion" among the employees in order to persuade them "to vote no Union." [4] That evening Clark and Warner met with about seven of Respondent's supervisory personnel and apprized them of the plans Clark and Warner had earlier discussed for launching a campaign to defeat the Union. Clark read the Union's letter requesting recognition; Clark testified that he "made the remark that we had had previous campaigns and previous experiences with unions trying to come into the plant and that we were not going to

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[4] Warner had telephoned the Cleveland Regional Office of the Board on July 16, after receiving Sarver's letter, and asked for representation petition forms, stating that he "was hopeful that the Union would file a petition for a representation election," but that if it did not do so the Respondent would. Petition forms were mailed to the Respondent on July 16, received by it on Monday, July 19.

negotiate with just a letter or a phone call." [5] In order to obtain an assessment of the extent of the Union's support among the employees, Clark read off the payroll list and asked the supervisors to respond whether the particular employee was for the Company, the Union, or undecided. According to Warner, the results indicated that there were "63 pro Company, 61 pro Union and about 45 questionable." Govino (Al) Rojas, a foreman present at this and subsequent meetings concerned with the Respondent's antiunion campaign, credibly testified that after this initial canvass of employee sentiment President Clark "said it didn't look so good because of the question marks," that "he wasn't about to deal with" the Union and added "to hell with them," and stated that "the reason he would ask for an election is he thought he would win if he talked to people and found out what the people's feelings were; and he thought they were misled, and thought it would be better if we went through a democratic election." Warner advised the supervisors, as he testified, that "the campaign was on," "mentioned to them their behavior patterns as to what they can do, what they couldn't do," and told them that further meetings would be held and that literature would be made available "to remind them again of their behavior in the conducting of the campaign . . ."

Following the July 16 meeting with supervisors, the Respondent held two additional evening meetings, preceded by dinner, of all supervisors and certain selected nonsupervisory employees, at the Crystal Inn, a motel-restaurant on the Detroit-Toledo expressway, on July 21 and 28. At the July 21 meeting Warner and Clark again went through the payroll list, checking off the names of

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[5] There was no discussion, according to Clark, of the Union's offer to submit the authorization cards for examination and count by some impartial person.

employees as for the Company, the Union or questionable on the basis of the information supplied by the supervisors and at least some of the nonsupervisors present. The results of this survey, according to Warner, showed "a slight percentage edge of those favoring the Company over those favoring the Union, and the question marks were reducing themselves." Warner testified that in view of the results he decided "not to intensify our campaign any more than we had visualized" and so informed those present.

During this meeting those in attendance were briefed by Warner on what they could and could not do in encouraging and persuading employees to reject the Union and in ascertaining the union attitudes and leanings of employees. They were instructed, as Warner testified, to "concentrate on this newer group" that had been hired in recent months, and in particular upon "those people that we knew little or nothing about or the question marks." The supervisors and nonsupervisors at the July 21 meeting were each given for their guidance in the campaign a detailed brochure which Warner described in the covering instruction sheet as intended to help them "answer any questions that may arise" during the Union's organizational efforts and to guide them "concerning your conduct and behavior in speaking with employees." The instructions further stated:

> Action, from here on out, is the keynote. When you receive any comments, good or bad, or rumors, be sure to report these facts, or make note of them and immediately advise the plant manager or H. C. Warner. Do it *now! Don't* wait until tomorrow, as the next day may be too late to act.
>
> I am confident that if each and every one of us does his job conscientiously, carefully studies the enclosed material and disseminates it at every opportunity, that we will have a majority *No Union* vote

when the election results are finally posted. Not until then will we be able to get down to the serious business of running our organization without the interference of a third party or stranger.

One final and very important note on what some of the things are that will help us to keep our employees satisfied on their jobs. Many people feel that it is the economic things, such as wages, benefits, facilities, equipment, etc. that are most important. Actually these are only a part of the story. The *most important factor* is our good relationships with our people. This means *taking time out* to talk to the people, recognizing the need for dignity and self-respect of each individual—treating people as the individuals they are—*taking into consideration the personal feelings of each one,* and *being fair, just and consistent.* This relationship with people is *your* responsibility—one that none of us can shift to someone else. You are an individual person—how do *you* like to be treated? The answer is quite obvious, I am sure.

Let us keep the above and following points well in mind and see how good a personnel and communication job we can do with our employees.

H. C. Warner
Personnel Director

The first section of the brochure gave these illustrations of what supervisors were and were not permitted to do: They could "Talk with employees at any time, in any public place or *open working area,*" but not in managerial offices, at the foreman's desk, or in employees' homes; supervisors could state what they thought about unions and union policies, but they should not "say anything as foolish" as that the plant would close if a union were voted in or that the Company would not negotiate with a union; they were permitted "to talk generally about what unions

have done in the nation and in specific plants, such as strikes, picket lines, violence"; they could "state what you believe to be the answer to any union agreement or claim, whether you think a union demand is fair"; they could express an opinion "as to how employees will be affected by what union representatives are doing"; and they could state their belief that employees should vote "No" in the election. The instructions stated that supervisors could not "ask employees what they think of unions generally or of any particular union"; "ask if an employee belongs to a union or whether he knows if other employees belong"; "ask how an employee has voted or will vote in a union election"; inquire whether "an employee attended any union meeting, who was there, who signed up, who hasn't etc."; and, finally, they were cautioned that "you cannot *promise any benefits, bribe, threaten, coerce* or *discipline* to influence an employee in his right to belong, or refrain from belonging to a union."

In addition to suggestions on how to approach employees to encourage them to "open up and tell . . . what he knows is going on," the brochure listed several pages of questions "commonly asked by employees before an election," with suggested answers. The tenor of the questions and the answers emphasized the costs, risks and possible disadvantages of union representation.

At the July 28 meeting Clark and Warner again canvassed employee sentiment by going through the payroll list and receiving reports from the supervisors and nonsupervisors present regarding the union leanings of particular employees. Some time was spent in reviewing the benefits and privileges then enjoyed by employees and a tentative list of these was considerably augmented. As thus developed, the list was reproduced the following day and made available to the supervisors and the nonsuper-

visory employees participating in these meetings for use in discussions with employees. The introductory paragraph of the document containing the "fringe benefits and other considerations which all employees currently enjoy" read in part as follows:

> Let us emphasize that these benefits and other factors have been improving and increasing steadily *without* any pressures, coercions, or threats from any union and that if a third party or stranger is voted in, all of these benefits and considerations *are subject to negotiation.* The Union may try to convince the employees that "they can't lose anything, that they can only gain." This is not a true statement, and it is important to emphasize the following: . . . All present benefits, listed below, are as much a subject of negotiation as are demands for additional benefits . . . .

The nonsupervisory employees who attended one or both of the meetings on July 21 and 28 were Salvator (Sam) DiMasso, Ralph Cogar, George Busch, Clarence Haubert and Louis Beruscha. DiMasso, the stockroom attendant, had signed a union card on July 11 but subsequently actively opposed the Union after having had a disagreement with several of the employee adherents of the Union. Warner's explanation for having DiMasso attend the meetings was to have DiMasso make a presentation to the supervisors of the complaints "that he had overheard at his place of business across the stockroom window concerning actions of supervisors . . ." President Clark added that DiMasso "meets everybody" because of his work location and thus was in a position, because employees "probably confide in him a little bit more," to identify the reasons for "unsettledness in our plant" and be of help in solving the problems "so there is no Union necessary." DiMasso, as he testified, attended both meet-

ings, gave his views as to the union leanings of employees as the payroll list was checked, and engaged in discussions with employees in the plant about company benefits and advanced arguments why they should vote against the Union. Cogar's job during the organizational period was that of inspector, which required that he check machine operations on the several lines, thus bringing him into contact with employees generally during the course of his duties. Also, Cogar had been a supervisor previously, and Warner testified that he included Cogar in the group for this reason and "because of his experience in former campaigns and his knowledge of some people" Cogar could "lend something to the group discussion." Busch, the former manager of the Dunkirk, Ohio, plant of Atlas Industries, a related concern under the same ownership and management as the Respondent, had been working as a toolmaker at the Gibsonburg plant since February 1965. Haubert attended only the July 21 meeting, in the place of Russell Hoffman, the master mechanic, who was then on vacation. Beruscha, a former supervisor, attended only the July 28 meeting, being invited by Warner for the same reasons as Warner testified prompted him to include Cogar in the group.

The record fairly reflects, in my opinion, that during the meetings of July 21 and 28 it was made clear to the nonsupervisory persons present that the instructions contained in the brochures distributed to them, insofar as these instructions prohibited supervisors from making direct inquiry of employees regarding their union sympathies, were not applicable to the nonsupervisors such as DiMasso, Cogar and Busch. Thus DiMasso, a witness for the Respondent, testified that Warner agreed with DiMasso's statement that the written instructions to supervisors did not apply to him, and that this exchange occurred

when the instruction brochure was being distributed and in the presence of the other nonsupervisory employees in the meeting. Foreman Rojas, a witness for the General Counsel, credibly testified that Personnel Director Warner, either at the July 21 or 28 meeting, stated that supervisors could not ask direct questions of the employees but that persons such as Cogar, Busch and DiMasso, who did not "belong to the supervisory level," could do so.

During the week preceding the election a final meeting of the supervisory group was held in the main office at the plant. Again the payroll list was canvassed, as at the earlier meetings. The results, according to the credited testimony of Foreman Rojas, were that "the list was pretty well on the Company's side."

2. Conclusions as to the Respondent's campaign.

Paragraph 10 of the complaint alleges that at the supervisory meetings referred to in the preceding section the Respondent "instructed its supervisors and certain designated employees to campaign actively on behalf of the Respondent; to invite conversations with the other employees; to seek out through indirection during the course of these conversations the union leanings and/or sympathies of the other employees; and then to report the union leanings or inclinations of its employees to officials of the Respondent." Paragraph 11 alleges that at these meetings the supervisors and designated employees were interrogated "with respect to the Union affiliation, membership and/or sympathy of all of its employees" and, in response to such interrogation and pursuant to the instructions given, the supervisors and designated employees reported "the union leanings and/or inclinations of its employees." In its answer, the Respondent alleged that the meetings were held in order to permit Respondent "to

combat the repeated misrepresentations made by and on behalf of" the Union and "to actively acquaint, inform and persuade its employees with respect to its reasons for opposing" the Union's efforts to become the representative of the employees. The answer further alleged that "said meetings had for their purpose continued efforts to dissipate and seek to nullify" misrepresentations by the Union; "the reviewing of the progress of" the Respondent and the Union, respectively, "in their solicitation of the support of the employees"; and "especially the assuring of an understanding of benefits already enjoyed by employees of short service, and such employees as were deemed to be undecided with respect to their position on the representation issue."

As the findings in the preceding section of this Decision establish, the Respondent embarked upon a systematic campaign to dissuade its employees from selecting the Union as their collective-bargaining representative. In addition to the antiunion speeches of President Clark and Personnel Director Warner, which are not claimed to have unlawfully impinged upon the employees' self-organizational rights, an integral part of the Respondent's campaign was to identify those of its employees who were sympathetic with the Company, those whose sympathies or leanings were toward the Union, and those who were undecided or whose attitudes were not known. In order to make this assessment of employee sentiment, supervisors and the key bargaining unit employees attending the July 21 and 28 management meetings were asked to classify employees, as the payroll list was read, as pro-Company, pro-Union, or questionable. Moreover, they were instructed to find out, by engaging employees in conversations and questioning them, where employees—particularly those in the unknown or undecided category—stood;

the supervisors were told to do this by indirection, but the key nonsupervisory employees were told that they could ask direct questions. The supervisors and key employees, I find, did ascertain and report on the union leanings and sentiments of employees. I further find that by including DiMasso, Cogar and Busch in the management meetings and assigning them to find out and report on the union attitude and sympathies of their fellow employees, the Respondent made them its agents, as alleged in the complaint.[6]

I find that the Respondent interfered with the Section 7 rights of the key nonsupervisory employees (DiMasso, Cogar, Busch, Haubert and Beruscha) by interrogating them concerning the union sympathies of fellow employees. I further find that by asking the supervisors and the key employees to classify employees with respect to their union sentiment, instructing them to engage employees in conversations in order to ascertain their views, and soliciting reports on employee views thus obtained and rating employees on the basis of such reports as for or against the Union, or questionable, the Respondent engaged in conduct that interfered with the self-organizational rights of its employees generally, in violation of Section 8(a)(1) of the Act.[7]

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[6] On the evidence, the same finding could be made as to Haubert and Beruscha. However, the complaint did not allege that they were agents and I make no such finding.

[7] See *Cannon Electric Co.*, 151 NLRB 1465, 1469, where the Board held that "the instructions to supervisors to report the names of union adherents and compliance with such instructions interfered with employee rights under Section 7 and thereby violated Section 8(a)(1) of the Act." See also *Sunbeam Plastics Corp.*, 144 NLRB 1010. As the Board observed in the *Cannon* case, the "frequency of a pattern of employer conduct associating discrimination against union adherents with employer's efforts to learn the names of union activists support the con-

(Continued on following page)

3. The no-solicitation and no-distribution rule.

Paragraph 7 of the complaint alleges that at all times material the Respondent "has maintained in effect and enforced a no-solicitation rule which prohibits the distribution of written or printed matter of any description on company premises unless approved by Respondent." The Respondent's answer "admits the allegations of Paragraph 7 . . . to the extent that a rule exists requiring prior approval for the distributing of written or printed matter on Company premises," but "specifically denies that such rule . . . was . . . discriminatorily applied." Paragraph 8 of the complaint alleges that on or about July 22 the Respondent "modified its no-solicitation rule . . . by posting a notice to all employees" in the following language:

NOTICE TO ALL EMPLOYEES
SUBJECT: CONDUCTING OF UNION BUSINESS ON COMPANY TIME.
FROM: HAROLD C. WARNER, PERSONNEL DIRECTOR
YOU ARE CAUTIONED THAT WE WILL NOT CONDONE ANY SOLICITATION OF UNION MEMBERSHIP OR THE DISTRIBUTION OF ANY UNION MATERIAL BY ANY EMPLOYEES DURING NORMAL WORKING HOURS.
ANY VIOLATION OF THE ABOVE WILL SUBJECT THAT INDIVIDUAL TO DISCIPLINARY ACTION.

Paragraph 9 of the complaint alleges that, since July 21, the rules described in Paragraphs 7 and 8 were discriminatorily enforced in that employees were prohibited "from engaging in prounion solicitation and campaigning during working hours" whereas Respondent permitted and encouraged "certain of its employees and supervisors to engage in antiunion solicitation and campaigning during

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(*Continued from preceding page*)

clusion that there is a 'danger inherent' in such conduct: a tendency toward interference with the exercise by employees of their organizational rights." And where, as in *Cannon* and in my opinion here, such tendency is not balanced by "legitimate employer interests," the conduct may be outlawed.

working hours." Respondent, in its answer, admitted the allegations of Paragraph 8 of the complaint but denied "that the notice posted by Respondent and set forth in Paragraph 8 . . . constituted a modification of its rule and practice thereunder referred to in Paragraph 7" of the complaint. The Respondent denied the allegations of discriminatory enforcement contained in Paragraph 9 of the complaint.

As I read these pleadings, the following facts are admitted: (1) the Respondent, at all material times, maintained and enforced a rule prohibiting distribution of any written or printed material on company premises without prior approval of the Respondent. (2) The notice of July 22 banned both solicitation of *union* membership and the distribution of *union* material by any employees during "normal working hours." On its face, the July 22 notice does not prohibit union solicitation outside "normal working hours," which I interpret to mean during employees' nonworking time. So interpreted the rule is a presumptively valid no-solicitation rule. However, with respect to distribution of union material, the notice of July 22, as I interpret it, did not relax the preexisting requirement of prior company approval for the distribution of written or printed material on company premises—without distinction as to working or nonworking areas.[8]

Insofar as the rule banned the distribution of union material in nonworking areas of the plant during nonworking time, without prior approval of the Respondent, I find that the rule was invalid and violative of Section

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[8] While the notice did not in terms prohibit distribution in nonworking areas during nonworking time, I construe the Respondent's admission that "a rule exists requiring prior approval" to mean that such a requirement not only existed prior to July 22 but remained in existence after the posting of the July 22 notice.

8(a)(1) of the Act. See *Walton Manufacturing Company*, 126 NLRB 697, enfd. 289 F. 2d 177 (C.A. 5); *Stoddard-Quirk Manufacturing Co.*, 138 NLRB 615.[9] Moreover, I find that the July 22 notice was promulgated by the Respondent as a part of its campaign to defeat the Union. In view of the open and encouraged antiunion solicitation engaged in by supervisors and key nonsupervisory employees (Busch, Cogar, and DiMasso) during working time, from the time the rule was posted until the August 6 election, I find that the rule was adopted for the discriminatory purpose of curbing employee activity in behalf of the Union. Under these circumstances, the rule was an unjustified restriction of the employees' right of self-organization and violative of Section 8(a)(1) of the Act.[10]

4. Alleged interrogation, threats and promises.

The complaint alleges that a number of named representatives of management engaged in conduct independently violative of Section 8(a)(1) of the Act. These separate incidents, generally involving alleged statements made to specific employees, will next be considered.

a. President Clark.

It is alleged that President Clark, on about July 10, threatened employees with discharge and other economic reprisals if the Union were successful in its organizational efforts and also promised promotions and other economic benefits if employees refrained from becoming or remain-

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[9] There is no evidence that the rule was necessary by reason of production or efficiency considerations or that a litter problem would exist in absence of the rule.

[10] See *Wm. H. Block Company*, 150 NLRB 341; *Ward Manufacturing, Inc.*, 152 NLRB 1270.

ing members of the Union; it is further alleged that on about August 2 Clark coercively interrogated employees.

As found above, Clark spoke to both shifts of employees on July 10, during which he referred to "some pressure" being put on employees to sign union cards, asked employees to inform management of any coercive tactics in this regard, and referred to benefits then enjoyed by employees. Frank Ruiz, an employee active in promoting the Union and obtaining authorization cards, interrupted Clark, identified himself as a card solicitor, and stated that as far as he knew no threats had been made. During the course of the discussion period following Clark's talk Ruiz had an exchange with John Shumaker, production control manager, about the Respondent's vacation plan and with Donald Halstead, time study supervisor, about whether or not production quotas were too high. After the meeting, Clark and Ruiz had a further conversation in the office of Plant Manager James Sutton, which is adjacent to the lunchroom area where the meeting addressed by Clark had been held. According to Ruiz, Clark asked him what he hoped to gain through the Union, to which Ruiz replied, better job security and higher pay. Clark, so Ruiz testified, stated that job security "was pretty good," but that if the Union came in it "would probably want" a 40- or 50-cent raise, which the Respondent could not afford, with the result that the plant might have to close. Clark also referred to the excess amount of scrap and said that a particular production line might have to close if the Union came in because the concern for which the crankshafts on that line were being produced could make them more advantageously. Ruiz also testified that Clark stated, with reference to Venancio Reyes, an employee Production Manager Shumaker had wanted to let go because of in-

ability to make the quota, that Reyes was retained for the reason he had worked there a long time, but that if the Union came in and Reyes failed to make the quota the Respondent, because matters "would be more impersonal," "might have to let him go."

It is Ruiz' testimony that Clark asked, during this conversation in Sutton's office, "How do you think you would do as a foreman?" Ruiz testified he replied that the job involved too much responsibility, and that Clark "told me the man with the right incentive could probably make a good foreman," that the Respondent might promote Foreman Rojas to assistant engineer thus creating a vacancy, which management might then select Ruiz to fill.

According to Clark, he and Ruiz continued talking about quotas in Sutton's office, immediately after the exchange between Ruiz and Halstead on this subject, with Ruiz stating that he could not meet some of the quotas. The following then occurred, so Clark testified:

> I said, "Mr. Halstead takes 80 per cent off of those quotas. He tries to make them as fair as possible for the average person to produce. We base our figures and we base our prices on these quotas. We have to do this, because we are competitive, so quotas have importance."
>
> He said, "Well, the unions get the quotas down." I said "This is right, but the unions are fair and if we would bring in a union time study man he will set that quota and possibly, Frank, you can't hit it. They will be fair." . . . He said, "Well, if we get the Union in we will have higher wages and we will have lower quotas."
>
> I said, "This is possible. I don't know. It would affect our cost. I know it would affect our cost."

At this point, Clark picked up a crankshaft being produced for a customer, and stated:

Frank, here is a shaft . . . that we are going to lose. I am having trouble with cost on it. Now, this affects our quotas. . . . Copeland, who is our Customer, is going to make this shaft. In fact, they have got the equipment in on it. I can't compete with their price. They are going to make this shaft and they may make the shaft on line 6. These are just basic sound facts. . . . I am not worried about losing it. We will have plenty of work . . . but we are going to lose this shaft because we can't compete. . . . Frank, this is the reason we have to hit these quotas, because our prices are based on these quotas.

Clark gave the following testimony on the question of Ruiz becoming a foreman:

Q. There was no discussion of Mr. Ruiz being made a foreman or anything of that nature?

A. No, there wasn't. I don't know where that stemmed from. Theoretically he was concerned. Here was a statement that was made I think before we got pushed into the office.

He said, "Ted, maybe you don't know it, but I am a Union pusher."

I said, "You are? . . . I didn't know it. . . . That is up to you, Frank, if you feel that way. I didn't know that you were pushing for the Union. I know it now. You are telling me. That is your privilege. You . . . were here in past campaigns, and I think your tendencies were in that direction also."

He was concerned about his job.

I said, "Frank, you do not have to worry about your job. You have been here through these campaigns before and you still have your job. You are a good worker, you are a good employee, your quality is good." I tried to settle him down and have him feel comforted.

He said, "I'll probably lose my job." I said, "You will not lose your job. You do not have to worry about that." He said, "Well, I am not getting ahead. I am not making enough."

I said, "This could be possible. . . . We . . . try to pick the best employees on the line to come up and be assistant line foremen and foremen. That is where we have to draw them from. You have not shown an interest in that direction. That is the way you advance."

I said, ". . . When we want to advance somebody we look down the lines and we pick these different people that have the most ability and we move them up. Why you have not been recommended I don't know . . . . This is something that I cannot answer."

I did not promise him a foreman's job. It was theoretically spoken of there.

Clark was not questioned about the statement Ruiz attributed to him to the effect that the plant might have to close if the Union succeeded in getting a 40- or 50-cent raise, nor did he deny that he told Ruiz that with a union in the plant relations between management and employees would be more impersonal and an employee such as Reyes who failed to make the quota might be let go. Ruiz impressed me favorably as a witness and I credit his account of the discussion he had with President Clark. The latter's version corroborates that of Ruiz in substantial part and, in the respects noted, Clark did not deny or contradict the statements attributed to him. I find that Clark's references to the possible closing of the plant or a production line in the event the Union came in were more in the nature of predictions of what might happen if union demands, either in terms of wages or production quotas, caused the Respondent to be unable to compete, rather than express or implied threats of economic reprisal. I do not find these statements violative of Section 8(a)(1). However Clark did state that the advent of the Union would lead to more impersonal and strict application of production quotas, with the result that an employee such

as Reyes, who had been retained because of his long period of employment despite failure to make the quotas, might be let go. I find this was an express threat of economic reprisal and violative of the Act.

With respect to the reference to a foreman's job for Ruiz, Clark, I find, introduced the subject, by asking how Ruiz thought he would do in that job, in the context of a discussion of Ruiz' personal job security and possibilities of advancement. Clark, as he testified, praised Ruiz' job performance but stated he had "not shown an interest" in moving up to assistant foreman or foreman. From Clark's testimony, quoted above, in which he referred to Ruiz' union "tendencies" in prior as well as the present campaign, and Ruiz' credited testimony that Clark said "the man with the right incentive could probably make a good foreman," I infer that Clark clearly implied that for Ruiz to receive favorable consideration for a foreman's position, for which Clark indicated Ruiz was probably qualified, depended upon Ruiz abandoning the Union. By in effect conditioning the possibility of job advancement for Ruiz upon abandonment or renunciation of union activity, the Respondent violated Section 8(a)(1) of the Act, and I so find.[11]

Raymond Sleek, night watchman at the plant, testified that "a week or two before the election," as he was opening the plant gate for Clark one night, Clark asked if Sleek had attended any of the plant meetings held by Respondent. At the time Sleek was wearing a Teamster badge. When Sleek replied that he had not attended company meetings, Clark "asked if I was to the Teamster's meetings," to which Sleek replied in the affirmative and

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[11] Since this incident was fully litigated, I conclude that the above finding is warranted even though the allegation in the complaint is that Clark promised Ruiz promotion if he refrained from becoming or remaining a member of the Union.

asked Clark "if there was anything wrong" in doing so. Sleek testified Clark said there was nothing wrong in going to union meetings, that Sleek "had a perfect right to go." The foregoing testimony of Sleek is undenied, and I credit it. Clark recalled the incident, testifying that he noticed Sleek was wearing a union badge and that "I made a kidding remark" to Sleek, the nature of which Clark could not recall. He denied asking Sleek whether he was going to vote for the Union (an inquiry not attributed to him by Sleek), and testified that Sleek explained he was not for the Union, but was wearing the badge to please his wife. I find that Clark asked Sleek whether he had attended meetings of the Union and that in the circumstances such questioning was violative of Section 8(a)(1) of the Act.

b. Personnel Director Warner and Production Control Manager Shumaker.

On several specific dates, according to the complaint, Personnel Director Warner unlawfully interrogated employees in his office regarding their union sympathies and activities, and on one occasion (August 11) threatened loss of employment and other economic reprisals unless employees abandoned their union activities. It is also alleged that on one occasion Production Control Manager Shumaker engaged in unlawful interrogation.[12]

Gloria Ruiz was interviewed for employment by Warner on April 14 and the next day, when she reported for work, Shumaker talked to her in his office. Miss Ruiz testified that in the course of the interview Warner asked whether she wanted a union in the plant or would support or vote for a union. She testified she replied that "at the

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[12] As to Warner, the dates involved are April 14, May 6, May 25, June 18 and August 11. The incident involving Shumaker is alleged to have occurred on April 15.

moment I didn't care." In response to Warner's inquiry she named "some good reasons" for a union and "he named more reasons against." She did tell him that she had belonged to Teamsters Local 20 in Toledo at her former employment. As to the conversation with Shumaker, Miss Ruiz testified he asked her if she wanted or would "precipitate" a union, and what she thought of unions. According to her, she told him she didn't care whether there was a union in the plant or not. She could not recall whether she informed Shumaker of her membership in the Union.

Warner testified that this customary practice, in interviewing an applicant for employment, is to say that he is not "personally interested" in the applicant's feelings about unions, but that the Respondent operated a non-union plant and felt that it could continue to do so and that he hoped that this made no difference to the applicant. If the applicant "wishes to pursue the matter any further, certainly I am willing to engage in a conversation with them." Concerning Miss Ruiz, Warner testified that she "brought the matter up" and "advised me of her membership in Teamsters Local 20 in Toledo," and that he then "pursued this from the standpoint" of inquiring about the contract, whether she enjoyed working with the Union, and what she thought were "some of the benefits" to be derived from unions—"things along that general line." He denied, in general terms, that he ever asked an individual being interviewed whether that person belonged to a union or ever indicated to an interviewee that a person favorable to a union would not be hired. Shumaker was not questioned about his interview with Miss Ruiz.

Dan Ramey, who was an active solicitor for the Union, testified that about June 10, as he was talking to Warner

about the possibilities of a job for his wife, Frances June Ramey,[13] Warner asked him whether he had heard anything about organizing activities and how he felt about unions. Ramey replied that he had heard "rumors" and that "there was a guy getting cards signed"; as to his own views, Ramey told Warner that a union "was all right if the Company could afford it." Warner was not questioned about this conversation; I credit Ramey's undenied testimony.

Ada Ramey, the sister-in-law of Dan Ramey, was interviewed by Warner on June 18 as an applicant for employment. She was hired on June 22. It is her undenied testimony, which I credit, that Warner asked her "how my husband and I felt about unions," after commenting that a union was organizing at her husband's place of employment. Mrs. Ramey answered that she did not discuss such matters with her husband and that as for her own views she had never worked in a unionized place and therefore stated "I don't know how I feel about it." Mrs. Ramey was laid off on July 22, as were some other employees. About 2 weeks after the August 6 election, Mrs. Ramey asked Warner how long the layoff would last, as she had an opportunity for another job but would not take it if she were soon to be recalled by the Respondent. In reply to her inquiry, Warner stated, "Well, I advise you to go ahead and take the job . . . because due to the Union trouble we're not taking any more orders in the shop." He added, as she testified "that he knew there were quite a few disappointed people in the plant because the Union wasn't in," to which she replied that she "wasn't disappointed at all." Warner then said, "You mean Dannie [Ramey] didn't have any influence on you at all?" She

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[13] Mrs. Ramey was hired on June 18, 1965.

replied that her brother-in-law had not influenced her. Mrs. Ramey was recalled to work by the Respondent during the latter part of September and was working at the time of the hearing.

I perceive no real conflict in the testimony of Miss Ruiz and Warner concerning their interview. Whether or not Miss Ruiz "brought up" the matter of her membership in the Union at her former employment seems immaterial. In any event, on his own version Warner proceeded to probe into her attitude and sympathies toward the Union and unions in general. I find that Warner questioned Miss Ruiz, Dan Ramey and Ada Ramey about their union attitudes and sympathies on the occasions of the separate interviews set out above, and that Production Control Manager Shumaker similarly interrogated Miss Ruiz when she reported for work on April 15. I further find that Warner told Ada Ramey about the middle of August when she asked about possibilities of returning to work following layoff, that she should take other employment because due to "the Union trouble" the Respondent was not taking any more orders, thereby attributing lack of employment opportunity for her to the recent activities of the employees in behalf of the Union. By thus interrogating employees and implying that jobs were not available because of employees' union activities, the Respondent, I find, violated Section 8(a)(1) of the Act.

c. Supervisors Halstead, Rojas and Shively.

Rosemarie Murray, who was active in signing employees and served as an observer for the Union in the August 6 election, testified to a conversation she had with Donald Halstead, time study supervisor, at her work station about 4 days before the election. It appears that she had arranged to be off the week of August 9 on vacation

without pay. She testified she asked him if she could still take her vacation, to which he replied that she could take the election week off including Friday, August 6, "providing you don't come in to vote." After she accepted the change she then stated that she did not say or mean that she would stay away from the polls, and Halstead remarked, as she testified, "you're buying your house" and that he would "hate to make a house payment from an unemployment check."

Halstead was not questioned about any conversation with Mrs. Murray concerning the timing of or the conditions under which she could take her vacation. He did testify that in one out of "quite a few conversations" he had with Mrs. Murray "she asked me if all this activity [he assumed she meant union activity] would affect our jobs." He replied that he hoped not, as he had a large house payment to make, and she said, "So do I."

Ellie Marie Messer testified that about 2 weeks before the election Halstead said to her that he had heard she and her husband Martin had "joined up with the Union" and that her brother-in-law, Gordon Messer, "is behind the Union." She told Halstead that she and her husband and brother-in-law were not adherents of the Union.[14] Halstead testified that he did say to Mrs. Messer "that I had heard that she and her husband and brother-in-law were involved in union activities, but I didn't believe it," and that Mrs. Messer answered, "No, it isn't true."

Halstead's statement to Mrs. Murray, whose undenied testimony I credit, that she was buying a house and that he would hate to make house payments out of an unemployment check, in the context in which it was made, was,

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[14] The three Messers had, however, signed union authorization cards prior to this conversation between Halstead and Mrs. Messer.

I find, a veiled threat of reprisal against supporters of the Union. In answer to her inquiry whether she could still take off the week of August 9 for vacation, he offered to let her take the week of the election, including Friday, August 6, the day of the election; when Mrs. Murray indicated acceptance of the change, Halstead added the proviso that she not come in to vote. Mrs. Murray then stated that by her acceptance of the change she did not mean she would refrain from voting; Halstead then made the comment about making house payments from an unemployment check. I find the remark was coercive and violative of Section 8(a)(1) of the Act. I also find that Halstead's admitted comment to Mrs. Messer that he understood she, her husband and her brother-in-law were union adherents—which Halstead carefully testified "was not a question" but "simply a statement"—was designed to elicit a response revealing the Messers' attitude or sympathies toward the Union and, therefore, constituted unlawful interrogation.

The complaint alleged that Foreman Rojas, during the period July 21 to August 5, unlawfully interrogated employees at their work stations. Foreman Rojas, a witness called by the General Counsel, testified at some length about the management meetings concerned with the Company's campaign to defeat the Union, as to which I have made findings in an earlier section of this Decision. Questioned as to his own activities in implementation of the instructions issued to the personnel attending these meetings, Rojas acknowledged that Personnel Director Warner's instructions were that the supervisors should "try to talk to our people and try to sell the company," but "not to ask the people directly where they stood." He testified that he "never asked any employee directly how they stood or whether they signed union cards,"

but that he did ask some of the employees, naming Roy Sleek and Donald Johnston, how other employees felt and reported what he had found out at subsequent supervisory meetings. I find that Foreman Rojas did interrogate employees with respect to the union leanings or sympathies of other employees and that thereby the Respondent violated Section 8(a)(1) of the Act.[15]

Frank Ruiz testified that the night before the election, near the stockroom, he and Foreman Ervin Shively had a conversation during which Shively asked Ruiz, a known union proponent, what he (Ruiz) hoped to gain by a union. When Ruiz answered that he expected to gain higher pay and job security, Shively mentioned a company that had gone bankrupt a year after its employees had organized. Shively testified that he told Ruiz, in answer to the latter's argument that employees would receive more benefits by having a union, "why have a union when you have the benefits you have already got where you . . . could have to start all over if a union came in," and stated that "any company with a union coming in could go bankrupt." I do not view this exchange between Shively and Ruiz as involving an incident of unlawful interrogation, as alleged in the complaint. It appears to me, rather, that

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[15] In so finding, I have carefully considered the evidence indicating that Rojas was sympathetic to the Union. Thus, he attended one preliminary meeting about June 22 that three other employees had with Eugene Shumaker, the representative of the Union. Also, there is undenied testimony, which I credit, that on the occasion when Nancy Taulker was laid off (about July 21) Rojas remarked to her that "if the Union didn't get in my chances of coming back would probably be slim." In addition, Baltazar Lopez testified that Rojas suggested that Lopez distribute union cards. On the whole, Rojas impressed me as a credible witness and my close observation of him when testifying about the management meetings and his own activity in participating in the Respondent's antiunion campaign convinced me that he was telling the truth in admitting that he asked Roy Sleek and Johnston how other employees felt about the Union.

Shively impliedly threatened that if the Union came in existing benefits would be jeopardized and employees "could have to start all over" and, in this connection, also expressed the view, as he testified, that "any company could go under because of high wages or large benefits." I conclude Shively's remarks impliedly threatened reprisal if the Union came in, and were thus violative of Section 8(a)(1) of the Act.[16]

d. Activities of Busch, Cogar and DiMasso.

I have found above that the Respondent enlisted Busch, Cogar and DiMasso as agents to sound out employees' union attitudes, to report thereon, and to work actively for the defeat of the Union. These employees were told that they could engage in direct interrogation and, because they were not supervisors, were not circumscribed in their approaches to employees as were the admitted supervisory personnel. Since the Respondent made these key employees its agents, it is, I find, responsible for their conduct where it impinged upon the self-organizational rights of employees.

About a week before the election DiMasso asked employee Alvin Anderson how he was going to vote in the election. Anderson replied he was voting for the Company, although he testified that was not the way he felt. Anderson's testimony is undenied, and I credit it. DiMasso admitted that he talked to employees at the stockroom window and acknowledged that he asked employee Lopez how he was going to vote. Employee John Ford testified that about 10 days before the election Busch asked him what he thought about "this election, the

[16] Inasmuch as this incident was fully litigated, I find the variation between the allegation in the complaint and the proof to be harmless.

Union"; when Ford answered noncommitally Busch asked Ford if he did not agree that "It's a bunch of these young kids wanting to act smart." Busch did not deny the conversation; he testified that the election "was on the tip of everyone's tongue," and that he probably said to Ford "something like, 'Well, how does the picture look to you, John.' " Robert Sabo, whose enrollment in an apprenticeship program partially sponsored by the Respondent entitled him to draft deferment, testified that a day or two before the election Busch engaged him in a conversation about the Union and his draft status, during which Busch intimated that Sabo might lose his right to attend apprenticeship school if the Union came in. Busch could not recall anything being said about Sabo's draft status but acknowledged that he did ask Sabo "how he stood and was coming on his apprenticeship program." I credit Sabo's testimony and find that Busch did state that Sabo's participation in the program would be jeopardized if the Union were selected.

Employee Daniel Nagy, still employed by the Respondent, credibly testified without contradiction that a few days after signing a union card on July 8 Cogar, then acting as foreman in place of George Whyte, stated that if the Union got in wages and jobs would be cut and also "said there won't be no apprenticeship class, and maybe the whole plant might just close down." According to employee Ford, on the Saturday before the election Cogar stated, with reference to the upcoming election, "I see you're going to vote the overtime out"; when Ford asked Cogar why he said that Cogar responded, "Well, if the union comes in, I don't think you will get any more overtime." Also on that day Cogar told Ford, "We know who is going to vote for the Union and who isn't going to vote

for the Union." Cogar could not recall having any conversation with Ford concerning overtime or union activity. Ford, still employed by the Respondent, impressed me as a truthful witness, and I credit his testimony.

I find that by the following conduct of DiMasso, Busch and Cogar the Respondent, having constituted them agents to engage in combating the Union, violated Section 8(a)(1) of the Act: DiMasso's questioning Anderson and Lopez how each was going to vote; Busch's questioning of Ford as to his union attitude, and his statements to Sabo that Sabo's participation in the apprenticeship program would be jeopardized by selection of the Union; Cogar's statement to Nagy that wages and jobs would be cut, the apprenticeship class discontinued and the entire plant might be closed if the Union got in; Cogar's statement to Ford that overtime would be reduced or eliminated if the Union prevailed; and the remark by Cogar to Ford that the Company knew how employees were going to vote in the election, thereby reasonably creating the impression that employees' union activities were under surveillance.

B. *The refusal to bargain.*

1. The appropriate unit.

The complaint alleged that the following unit was and is appropriate within the meaning of Section 9(b) of the Act:

> All production and maintenance employees employed at the Employer's Gibsonburg, Ohio plant, including shipping, receiving, stockroom and tool room employees, truckdrivers, draftsman, and working group leaders, but excluding office clerical employees, time study methods employee, and all guards, professional employees, and supervisors as defined in the Act.

In its answer the Respondent admitted that this was the unit agreed upon by the parties in the consent election agreement executed on July 27; it denied, however, that the above unit description "has any validity outside of the context" of the consent election agreement and asserted that the unit so described differs from that set forth in the Union's letter of July 15 requesting bargaining. The record shows, and no evidence was adduced to the contrary, and I accordingly find, that the above unit is appropriate. The unit set forth in the Union's letter of July 15 is phrased in slightly different words, but is not materially different. The parties encountered no real difficulty in reaching agreement on the unit description contained in the consent election agreement and there is no evidence that there is any variance either in terms of total employees covered or specific employees included and excluded, between the unit description in the Union's letter and that contained in the consent agreement and in the complaint. I find that the unit set out above is appropriate within the meaning of Section 9(b) of the Act.

2. The Union's majority status.

The Union made its demand for recognition at about 2 p.m. on July 15, followed by a letter dated the same day which was received by the Respondent on July 16. Personnel Director Warner, in the July 15 telephone conversation with Sarver, business representative of the Union, declined to recognize the Union and confirmed this by letter dated July 19. The critical date for determining whether the Union represented a majority is July 15, the date upon which it made its demand and was refused recognition.

In connection with the consent election agreement the Respondent submitted a list of employees within the

stipulated unit who were on its payroll for the period ending July 17. This list (in evidence as part of General Counsel's Exhibit 21), as corrected [17] contains a total of 169 employees in the unit as of July 15. In order for the Union to have a majority, therefore, there must be at least 85 valid authorization cards.

In support of its representation petition filed on July 21 the Union on July 20 mailed to the Board's Regional Office 88 authorization cards and a typewritten alphabetized list of the names on these cards (General Counsel's Exhibit 23), which were received and date-stamped by the Regional Office on July 21. According to the undenied testimony of Shumaker, business agent of the Union, which I credit, all the cards so submitted and listed (with the exception of the card of Longino Mendoza, dated July 16 and received by the Union that day) were in the possession of the Union on July 15 when the demand for recognition was made. Shumaker further testified that on July 16, when the cards were turned over to a secretary to prepare the alphabetized list, he had three other cards (those of Dwayne Clabaugh, Salvator DiMasso and Larry Stevens); he did not, however, submit them to the Regional Office because these individuals had written to the Union in effect revoking their cards.[18] The General Counsel concedes that William Gengrich and Dwight Wilson, whose names are on the alphabetized list submitted by the Union but whose cards were not offered in evidence,

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[17] The list shows Jerry Binder as resigned on July 15. In fact, it was agreed and Binder so testified, that Binder resigned as of the end of his shift on Friday, July 16. Dwight Wilson, also on the list, in fact was terminated on June 28. Thus Binder is included and Wilson excluded as of July 15 in considering the number of employees in the unit.

[18] I consider below whether the cards of Clabaugh, DiMasso and Stevens are to be counted toward the Union's majority as of July 15.

were terminated prior to July 15, and that Mendoza's card was received subsequent to the July 15 demand. However, the General Counsel contends that the cards of Clabaugh, DiMasso and Stevens are to be counted as valid because the revocations of these employees were not received by the Union prior to July 19. To summarize, the General Counsel's position is that as of July 15, 88 employees out of the total of 169 in the unit as of that date had designated the Union as their collective-bargaining representative.[19]

The Respondent advances a number of contentions, both general and specific, against the validity of many of the cards. Thus it asserts that some cards were obtained by representations that they were only for the purposes of obtaining an election or on the misrepresentation that all or most other employees had signed; other cards are said to be invalid because of failure to establish the authenticity of the signature or the date on which signed; and in other instances it is claimed that the card cannot be counted because the signer revoked his designation. In the sections which follow, I deal with these contentions as they apply to the cards of specific employees.

a. Cards allegedly invalidated because of representations.

In its brief, the Respondent attacks the validity of 15 cards on the ground that the signatures thereon were obtained (in 13 instances) "on the basis that the purpose of the card was specifically that of obtaining an election" or (in 2 instances) "on the basis that everyone else had signed."

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[19] From the alphabetized list of 88 employees (GC Exhibit 23) the General Counsel excludes Mendoza, Gengrich and Wilson and adds to that list Clabaugh, DiMasso and Stevens, for the reasons indicated.

1. *Gregory Boltman* testified that he signed his card (GC Exhibit 2 AX)[20] on July 1, the date appearing thereon, at the solicitation of his friend Phillip Fogle while in the Company's parking lot during a break period. On cross-examination Boltman was first asked whether when he signed any reason was given him for signing and he answered: "No. I was under the impression that it was to get the Union in the factory, and I thought they had a right to get one if they wanted one." He also stated that neither Fogle nor another employee present when he signed talked about the need for having an election, although he added that he did not remember what was said. He later testified that he told Fogle that he "would sign to have a vote," and on redirect examination answered somewhat hesitantly "I think so" when asked whether Fogle stated that the only purpose for signing the card was to get a vote. Boltman testified that he read the card before he signed. I find that Boltman's recollection of what was said to him by his friend Fogle as to the reasons for signing the card was too vague to warrant the conclusion that Boltman signed because he was told that the card was only for the purpose of obtaining an election. I believe his initial statement, that the card was "to get the Union in the factory," an objective with which he indicated agreement, more closely approximates what was said to him. I find Boltman's card to be valid.

2. *Patricia Ickes* (GC Exhibit 2 BE) and her husband, *Richard Ickes* (GC Exhibit 2 BF), each identified the signature on the card they signed June 13 at the solicitation of Glen Blevins, a fellow employee. Mrs. Ickes first testified that Blevins gave no reasons why she and

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[20] For convenience, I will in the consideration of specific cards indicate as above the exhibit number of the particular card under discussion.

her husband should sign a union card, but then acknowledged that in answer to a pretrial questionnaire from the Regional Office she stated that the person who solicited her card asked if she and her husband "were interested in signing a card so that the Union could come in for a vote." She testified, however, that she did not believe Blevins stated the cards would be used only to get a vote. Mr. Ickes was not questioned regarding any statements made to him by Blevins. I find that no statement was made by Blevins to Mr. and Mrs. Ickes, that the sole purpose of signing the card was to obtain an election. Their cards are valid.

3. *Baltazar Lopez* (GC Exhibit 2 BJ) signed his card on July 12, at the solicitation of employee Donald Johnston. Lopez testified that Johnston gave him no reason for signing the card and he could not remember hearing Dan Ramey, who was active in soliciting cards, say that the cards were for an election. Lopez' card, I find, is valid.

4. *Jerry Mason* (GC Exhibit 2 BK) signed his card on July 10 and mailed it to the Union. He could not recall, in testifying, from whom he got the card, which he obtained about a week before he signed. In Mason's prehearing affidavit, the following appears:

> As I recall all the agent told me was that I should read over the card and if I was interested I should sign it and mail it back to the Union. He said that if enough employees were interested we would have an election. That's all he said. He did not say that the cards would be used only for the purpose of securing an election of the employees.

I find Mason's card to be valid.

5. *Gordon Messer* testified that he signed and dated two cards (GC Exhibit 2 ED, dated June 12, and GC

Exhibit 2 BL, dated July 9). The June 12 card, which bears the Board's date stamp of July 21, was signed at the solicitation of Blevins, who stated that "If enough cards were signed there may be an election." Later, upon learning that Blevins had not turned in the card, Messer signed and mailed the card dated July 9 to the Union. It is postmarked July 9. I find both cards to be valid.[21]

6. *William Nagel* (GC Exhibit 2 BO) testified he signed his card on July 7 (the date appears to me to be "7/9/65") and mailed it to the Union. It bears a postmark of July 10. During the period of several days that elapsed between the time he got the card and signed it, no union representative spoke to him about signing the card, although he and some friends did mention in conversation that "a certain number of cards"—the percentage he could not recall—were needed for an election. I find that no representation was made to Nagel that would warrant rejecting his card, and I find it is valid.

7. *Robert Sabo* (GC Exhibit 2 L) signed his card on June 28, at the solicitation of Frank Ruiz. Sabo testified that Ruiz told him, before he signed the card, that cards from 80 percent of the employees were needed in order to obtain an election. I find nothing in this statement to indicate that Sabo was told that the sole purpose of signing the card was to secure an election. The card is valid.

8. *Brenda Seymour* (GC Exhibit 2 AH), whose card, dated July 11, was identified by Rosemarie Murray who solicited Seymour's signature, testified that when Mrs. Murray asked her to sign she made some reference to the

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[21] The Respondent questioned whether Messer in fact signed the cards, and for comparison purposes introduced specimens of Messer's signature on W-4 forms. While the signatures on the cards appear to be in less labored script than the other writing attributed to Messer, I credit his testimony that he signed the cards.

number of cards needed to hold an election. After hearing the July 14 speech of Personnel Director Warner, in which he accused the Union of not "being entirely honest" in its solicitation campaign, Mrs. Seymour on July 21 mailed a letter to the Union resigning (Respondent's Exhibit 12). I find Mrs. Seymour's card can be validly counted toward the Union's majority as of July 15 and that no invalidating representation was made to her when she signed it.

9. *Lillie Sleek* (GC Exhibit 2 CA) signed her card on July 8, at the request of her husband, Raymond Sleek. On cross-examination she testified her husband "said that they needed so many percent of cards" for an election and answered affirmatively when asked if she signed "for that reason . . . to have an election." On redirect she testified as follows:

> Q. (By Mr. Goubeaux) Mrs. Sleek, did your husband ever tell you the only purpose of those cards was to get an election?
>
> A. Yes.
>
> Q. He did tell you that?
>
> A. Yes.
>
> Q. When did he tell you that?
>
> A. On the night I signed the card.

Mrs. Sleek later testified that "all I remember is that he told me that if so many of these cards were signed . . . the union could come in for an election," and that she did not remember what her husband said to persuade her to sign the card.

10. *Raymond Sleek* signed two cards, one dated June 11 (GC Exhibit 2 CB) and the other undated but stamped as received in the Regional Office on July 21 (GC Exhibit 2 EK). The first card was signed at the Union's hall and given by Sleek to Dan Ramey; because Sleek could not remember whether the first card was one for the Union,

he later signed the other card (undated) which he received from Frank Ruiz. The latter card was signed at home. Sleek testified he told his wife, Lillie, that he "had gotten two cards and I asked her about signing and she wasn't too sure about it until I had signed mine," and that he further told her that Ruiz had indicated that a certain percentage of cards was needed for an election. Sleek testified further that he was not present when his wife signed her card, and estimated that she gave the filled out card to him about 2 days after he last asked her to sign. After receiving her executed card, Sleek delivered it and his own to the union hall.

Considering the testimony of Lillie and Raymond Sleek, I am persuaded and find that Sleek signed a card early in the campaign and thereafter, uncertain that this card was for the Union, signed another but failed to date it. This second card, as well as another card which his wife signed on July 8, were both delivered by him to the Union within a few days of July 8 and prior to July 15. I think it most probable that Sleek told his wife, as he had been told by Ruiz, that in order for there to be an election a stated percentage of cards was needed, and I so find. I discount Mrs. Sleek's ready affirmative answer to General Counsel's question whether her husband told her at any time that "the only purpose" of the cards was to get an election, because when asked to state, on her own, what he told her she twice testified (before and after answering that the "only purpose" for the cards given by her husband was an election) that if enough cards were signed the Union could obtain an election. I therefore conclude that the cards of Lillie and Raymond Sleek are valid.

11. *Dale Stein* (GC Exhibit 2 CD) acknowledged the signature on his card, which is dated July 9. Although he could not be sure of the exact date that he signed he tes-

tified that it was during the first week in July and before he was laid off, which was on July 16. According to Stein, Roy Sleek, who solicited his signature, stated that after a certain number of cards were signed there would be an election. Stein testified that about a week "after I turned the card in" he wrote to the Union (GC Exhibit 3) resigning. The letter of resignations is postmarked July 19. I find that Stein's card is valid as of July 15 and that no representation was made to him that it was only for the purpose of an election.

12. *Nancy Taulker* (GC Exhibit 2 AI) testified that Gloria Ruiz gave her a card at work and stated "that she had to have so many cards signed before they could have a vote." Mrs. Taulker took the card home and later signed it, with no one present, after telling Mrs. Murray, who had called on her about signing, that "I would fill one out and I would give it to her the next day, so I did." Mrs. Taulker's card is dated July 8.[22] I find Mrs. Taulker's card to be valid, that it was signed on the date appearing thereon (July 8) and that no representation was made to her that the only purpose of the card was to obtain an election.

13. *Clarence Eversole* (GC Exhibit 2 T) testified that he signed his card, which is dated July 13, at the solicitation of Dan Ramey.[23] Eversole, a witness for the Respondent, testified that Ramey told him, "you might as well sign it. . . . Everybody else has or quite of few of them have." Eversole further stated that he did not believe anything was said about needing the card for an election. Ramey's recollection was that he asked Eversole if he

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[22] I accept Mrs. Taulker's testimony about the circumstances under which she signed the card rather than Mrs. Murray's account which is that Mrs. Taulker signed in her presence at the same time that Norma Ault did.

[23] Ramey testified to the same effect.

wished to sign a card "so we could have an election." Eversole testified he never attenmpted to withdraw his card. I find no invalidating representation in this instance, and I conclude that Eversole's card is valid.

14. *James Probst* (GC Exhibit 2 BR) identified the signature on his card, which is dated July 8, and testified he was not solicited by anyone to sign. He mailed the card to the Union. It is postmarked July 9. After signing, he heard discussion about how many cards were needed for an election, but he "didn't pay too much attention to it." Plainly there is no evidence of any improper inducement or representation having been made to Probst. I find his card is valid.

b. Cards allegedly invalid because of insufficient authentication or lack of dates.

In a number of instances the Respondent contends that cards cannot be accepted as valid because of insufficient authentication and for failure to establish, particularly in the case of undated cards, when they were signed. The cards relied upon by the General Counsel as to which such questions are raised either specifically by the Respondent or due to seeming ambiguities in the testimony, are considered in this section.

1. *Charles Adams* (GC Exhibit 2 AS) identified the signature on his card, which is undated and bears the Regional Office date stamp of July 21. He testified that he signed at the solicitation of Frank Ruiz, on a payday at Seifert's bar where he and other employees customarily cashed their checks. He fixed the time as "probably after" July 4, and testified that two other employees, Paul Cooper and Gary Noss, signed their cards at the same time. Ruiz testified that he solicited Adams at the same time as he obtained Cooper's signature at Seifert's bar and that he

saw Cooper place the date, July 9 (a Friday), on the card bearing Cooper's name. Ruiz further testified that Noss was present but that Noss did not then sign a card because he had previously successfully solicited Noss, which agrees with the date (June 25) on the card of Noss. I find that Adams signed the card the same date as Cooper signed his, July 9, and that the card is valid.

2. *Alvin Anderson* (GC Exhibit 2 AT) identified his signature and testified that he signed the card, which is undated, "in June, when it was first started," at the solicitation of Glen Blevins. Testimony of other witnesses establishes the Blevins' activity in soliciting cards occurred at the outset of the Union's campaign. Moreover, Alvin's father, Robert Anderson, testified that the card he authorized his wife to sign for him (GC Exhibit 2 AU), which is dated July 12 and postmarked July 13, was brought to him by Alvin. I credit Alvin's testimony, which is uncontradicted and plausible, and find that he signed his card during June. I find it to be valid.

3. *Robert Anderson* (GC Exhibit 2 AU), who cannot read or write, testified that he authorized his wife to fill out his card and sign his name, that he personally placed thereon the mark "x" which appears on the signature line, and that he mailed the card. The date on the card is July 12 and it bears a July 13 postmark. I credit Anderson's testimony, which is undenied, and find that his card is adequately authenticated and is valid.

4. *Jerry Eschedor* (GC Exhibit 2 D) was not a witness; the undated card bearing his name was identified by Ruiz. According to Ruiz' credited testimony, Eschedor signed in his presence during "the early part of the campaign," in the car of Gary Noss in the Company's parking lot, after Ruiz had signed his own card (June 22) and about the same time as Douglas Bishop signed (Bishop's

card is dated June 25). I perceive no reason to doubt Ruiz' testimony regarding the time and circumstances of his solicitation of Eschedor's card; in this connection I note that of the 13 cards he identified other than his own, all except Eschedor's are dated and most of them bear dates during the last week of June. I find that the card of Eschedor is valid and was signed about June 25.

5. *Gregory Kasch* (GC Exhibit 2 BG), *James Olmstead* (GC Exhibit 2 AR), *Johnny Riffle* (GC Exhibit 2 BX), and *Gerald Walp* (GC Exhibit 2 CL) did not appear as witnesses because they were in the military service. There is no question as to their being employed and in the unit on the critical date, July 15. Cards purportedly signed by them, all dated prior to July 15 and bearing the Regional Office date stamp of July 21, were received in evidence and are relied upon by the General Counsel in support of the Union's majority.

With respect to the card bearing Kasch's name, dated July 3, Mary Hauck, his mother, credibly testified that the signature thereon was in her son's handwriting. It was stipulated that if called as a witness Kasch would testify consistent with a completed questionaire received from him by the Regional Office, in which he acknowledged the signature as his own and answered affirmatively that he signed on the date shown on a copy of card sent to him. It was also stipulated that the signature on a W-4 form bearing Kasch's name was his. I find that the signature on the three exhibits bearing the name of Kasch appear to be in the same handwriting; accordingly, I find Kasch's card valid and authentic.

Nancy Tillman, the sister of Olmstead, identified the signature on the card bearing his name as that of her brother, dated July 9. In addition, she identified the envelope of a letter she received from Olmstead, postmarked

August 24, as bearing her brother's signature in the return address space. The parties agreed to the authenticity of Olmstead's signature on his W-4 form. Comparing these signatures, and crediting Mrs. Tillman's testimony, I accept the card as validly signed by Olmstead.

Mrs. Meda Riffle credibly testified that all the writing on the card bearing her son's name, dated July 12, was in his handwriting. After comparing the signature on the card with the signature on Riffle's W-4 form, which was stipulated to be his, I find they are in the same writing, and I conclude that Riffle's card is valid.

With respect to Walp's card, dated July 7, Mrs. Clara Walp, his mother, called as a witness by the General Counsel, declined to state whether the signature on the W-4 form bearing his name was in her son's handwriting. However, it was stipulated that the signature thereon was his, and also that Walp would testify if called consistent with the returned questionaire sent him by the Regional Office, in which he acknowledged that the signature on the copy of the card sent with the questionnaire was his and that he signed the card on the date shown thereon, July 7. After having compared the signatures on the three documents, I stated on the record that they appeared to have been signed by one and the same person, a view I adhere to after further comparison. I find that Walp's card was properly authenticated and that it is valid.

6. *James Powell* (GC Exhibit 2 BQ) testified credibly that he signed his card, which is undated, "in the beginning, when they started the Union activities," at the solicitation of his half-brother Douglas Bishop. Bishop's card, solicited and identified by Ruiz, is dated June 25. Powell testified further that he mailed the card to the Union. I find that Powell's card is valid and that he signed it and delivered it to the Union prior to July 15.

7. *Joseph Reineck* (GC Exhibit 2 BU) credibly testified that he signed his card, which is undated, "right when the Teamsters were first organizing," and that he did so about 2 weeks before Dale Stein, whose card is dated July 9, signed his. He credibly testified that he gave the card to Frank Ruiz. I find that Reineck's card is valid and that it was signed by him late in June and in any case prior to July 15.

8. *Frances June Ramey* (GC Exhibit 2 BT), the wife of Dan Ramey, testified that she printed her name on the card on the date, June 24, shown on the card. She testified that she could give "no real reason," for printing rather than signing, but affirmed that she intended to designate the Union as her bargaining agent. I find her card is valid.

9. *Jerry Aldrich* identified his signature on two cards bearing his name, one dated July 2 (GC Exhibit 2Q) and the other dated July 16 (GC Exhibit 2EE). He testified that he signed the July 2 card at Seifert's bar, dated it and gave it to fellow employee Mendoza. The card bears the Regional Office date stamp, July 21. Subsequently he signed the other card at the solicitation of Ramey, in order "to make sure they got one," in Ramey's car. Ramey, who preceded Aldrich as a witness, identified Aldrich's signature upon being shown the July 2 card (he read the date as July 24) and stated that Aldrich signed it in his (Ramey's) car. Ramey was not questioned about the July 16 card bearing Aldrich's name. I believe the testimony of Aldrich, since he would more likely have a clearer recollection of the sequence in which and for whom he signed two cards, and conclude that he did sign the July 2 card on the date indicated, and thereafter on July 16, signed another card. I find the July 2 card to be valid.

10. *Robert Purney* credibly testified that he signed two cards and identified his signature, one being dated

July 1 (GC Exhibit 2 EA) and the other dated July 8 (GC Exhibit 2 BS). He explained that at the time he signed the July 1 card he did not have his social security number with him, and therefore later filled out and mailed the July 8 card (which is postmarked July 9) to the Union. I credit his testimony. Purney further testified that when he signed his card on July 1 two other employees, *Thomas Claussen* and *Lynn Schliefert,* who were riding in his car, signed their cards and that he saw them sign. They then drove to the home of Frank Ruiz and delivered the cards to Mrs. Ruiz. Claussen's card (GC Exhibit 2 EB) and Schliefert's card (GC Exhibit 2 M) are both dated July 1.[24] I find that the two cards of Purney, dated July 1 and July 8, and the cards of Claussen and Schliefert, dated July 1, are valid. Because of incomplete identification, I do not rely on the July 8 card for Claussen.

11. *Richard Goetz* credibly testified that he signed two cards, one dated June 25 (GC Exhibit 2 EC) and the other dated July 10 (GC Exhibit 2 BC). The latter card he mailed to the Union and it is postmarked July 10, having given the first card to Ramey. I find that both cards are valid.

12. *Tex Sleek* credibly testified that he signed his card (GC Exhibit 2 CC) on the first day of his employment, July 9, after work, and that he gave it to his brother, Roy Sleek. In the date space the figures "7/9/65" appear, the "7" and the "65" being in ink and the "9" in pencil. The name and address of the employer are also in ink, while the balance of the writing on the card is in pencil. Sleek testified, credibly as I find, that the writing in ink

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[24] Another card bearing Claussen's name (GC Exhibit 2 B), dated July 8 and postmarked July 9 addressed to the Union, was received in evidence, although Purney did not see Claussen sign that card.

was on the card when he received it from his brother and that he personally wrote his name and the balance of the card in pencil. I find that the card is valid.

13. *Richard Keesbury* testified he signed his card (GC Exhibit 2 AE) on July 12. In the date space the card shows the figures "12/7/65." He credibly testified that he placed the day of the month before the month because of a habit acquired in the military service. The card bears the Regional Office date stamp of July 21. I find the card was signed on July 12 and is valid.

14. *Claude Maynard* testified that he signed two cards, one undated (GC Exhibit 2 EJ) and the other dated July 9 (GC Exhibit 2 AQ) which he mailed to the Union. The latter card bears a July 11 postmark. He credibly testified that he signed and mailed the second card because he "didn't know positively" whether Gilbert Flores, a fellow employee to whom he gave the first card which he had signed "pretty close" to July 1, had turned the earlier card over to the Union. I find that Maynard signed the undated card about July 1 and thereafter signed the card dated July 9. Both cards are valid.

15. *Thomas Heineman* testified that he signed two cards for the Union. One card (GC Exhibit 2 EH), which he testified he signed at the solicitation of Ramey after being told by Ramey that the writing on an earlier card Heineman had signed and given to Ramey had been obliterated because it had been run through a washing machine, bears the date "15 July 65." Another card bearing Heineman's name (GC Exhibit 2G), dated "25 June 65," was identified by Ruiz, before Heineman testified, as having been signed by Heineman at the solicitation of Ruiz. It bears the July 21 Regional Office stamp. Ruiz further testified that he obtained only one card from Heineman which was early in the campaign, and that Heineman

used a pen supplied him by Ruiz which "didn't write too well" with the result that Heineman "had to go over" the signature. Ruiz also stated that after Heineman signed he (Ruiz) "heard later on that somebody else signed him up, too." Heineman testified that he "usually" wrote dates in the manner appearing on both cards, with the day of the month preceding the month, and that on each card the date portion appeared to be in his handwriting. He acknowledged that the signature on the July 15 card was his, but stated that the signature on the June 25 card, "especially the last name"—in which the letters of the last name appear to have been retraced—"doesn't look like my writing." Heineman was not asked whether he signed a card at the solicitation of Ruiz, but did state that it was possible that he signed three cards. Later, Heineman mailed a letter, dated July 19, to the Union asking that it be treated as "my official resignation from Teamsters Union Local 20."

I conclude that both cards bearing Heineman's name were signed by him. The signatures on both cards (except possibly the last name on the June 25 card which appears labored and retraced) have common characteristics, and both cards are dated in the manner "usually" done by Heineman. Plainly the June 25 card cannot be the only other card he signed, accepting his testimony that he signed two cards for Ramey and that the first went through a washing machine. I credit the undenied testimony of Ruiz that he signed Heineman early in the campaign because he knew him well and that the pen used by Heineman was faulty and necessitated retracing some of the writing. I find both cards to be valid as of July 15, and that his resignation was not effective until after July 19 when received by the Union.

c. Cards allegedly revoked.

1. *Dwayne Clabaugh* (GC Exhibit 2 AZ) admittedly signed the undated card bearing his name. He testified he did so at a union meeting, and fixed the time as "either the last week of June or the first week of July." Since Clabaugh testified that this was a union meeting attended by DiMasso, who went to only one meeting, Sunday, July 11, at which he signed his card, I find that Clabaugh signed his card on July 11.

2. *Salvator DiMasso* (GC Exhibit 2 R) signed his card, as he testified, at the July 11 meeting, although he misdated it August 11. On July 15, DiMasso typed out and signed a letter to the Union stating that he did not "accept membership" in the Union. Clabaugh, to whom DiMasso showed a copy of his letter of "resignation," signed a carbon copy. DiMasso mailed the two documents to the Union, but could not remember when he did so. Shumaker, business agent of the Union, testified that the Clabaugh and DiMasso resignations were received on Monday, July 19. I so find.

I conclude that the authorization cards of Clabaugh and DiMasso were signed on July 11 and that the revocation of the cards was effective on July 19, when the letters revoking them were received by the Union. Accordingly, I further find that the cards were valid on July 15 when the Union made its demand for recognition and are, therefore, to be counted toward the Union's majority on that date.

3. *Larry Stevens* (GC Exhibit 2 CI) identified his signature on the card bearing his name. He signed on July 13 and testified that he gave the card to another employee, Harold Grove, "a couple of days" after signing it—"about the 16th or 17th" of July. The record does not disclose

when the card came into the Union's possession, although Shumaker testified that he had the cards of Clabaugh, DiMasso and Stevens on July 16, when his office girl began preparing the alphabetized list of cards for submission to the Regional Office. A resignation from Stevens was, I find, received by the Union not later than July 20, the date the cards and the list were mailed to the Regional Office. I conclude that the evidence with respect to Stevens' card fails to establish that this card was in the possession of the Union on July 15, since Stevens testified that as much as "a couple of days" elapsed between the date he signed it (July 13) and when he gave it to Grove. Accordingly, I find that the card of Stevens may not be counted toward the Union's majority on July 15.

d. Conclusions as to majority.

In the preceding sections I have considered the authorization cards of 38 employees out of the 88 cards relied upon by the General Counsel and have found that 37 of these are valid and that the remaining card, that of Larry Stevens, must be excluded as it was not shown to have been in the Union's possession on the critical date, July 15. In addition to the foregoing 37 valid cards I find that 50 other employees, whose cards were authenticated by the credible testimony of themselves or others who witnessed the signing, had executed valid authorization cards which were in the Union's possession on July 15.[25] Thus the Union had on that date valid cards from 87 employees

[25] There are 88 names on General Counsel's Exhibit 23, the alphabetized list, and I find that for 85 there are in evidence valid cards. No cards were introduced for Gengrich or Wilson, as they had been terminated prior to July 15, and the card of Mendoza is not counted as it was received on July 16. Not on the list, but entitled to be counted as valid cards, are those of Clabaugh and DiMasso.

out of a unit consisting on that date of 169 employees, and therefore represented a majority.

3. The defense of "good-faith doubt."

In my opinion, the record herein affirmatively establishes that the Respondent, in refusing to bargain with the Union, was motivated, not by a good-faith doubt of the Union's majority status but, to the contrary, by a rejection of the collective-bargaining principle. Before the Union made its demand for recognition on July 15 the Respondent, in the speeches of President Clark and Personnel Director Warner on July 10 and 14, respectively, had made clear to employees that it was opposed to the organizational efforts of the Union and charged that the Union, by obtaining signatures to cards which provided that the signatory accepted membership in the Union and authorized it to act as collective-bargaining representative, was not "being entirely honest" and was "trying to avoid an election." In replying to the Union's oral and written demand for recognition, the Respondent confined itself to referring the Union to the Board and did not comment upon the Union's offer to submit its cards to an impartial third-party check or explain why such procedure was unacceptable. At the supervisory meeting the night of July 16 Clark did not discuss the Union's offer of a card check; he and Warner had already decided upon an "active campaign" to defeat the Union. Clark remarked to the supervisors that the Respondent was "not going to negotiate with just a letter or a phone call," and stated that the Respondent could win an election if the employees were exposed, to use Warner's words, to "an active campaign of education, information and persuasion" to convince them "to vote no Union."

As found above, the Respondent did engage in a systematic campaign, through supervisors and key nonsupervisory employees, during the period from July 21 to the election on August 6, of questioning employees as to their union sympathies, obtaining reports from the supervisors and key employees on employee sentiment, and disseminating information on company benefits and arguments against union representation. At the same time, the Respondent promulgated a rule, which I have found was for a discriminatory purpose and violative of the Act, against union solicitation and distribution of union literature. Moreover, during this period certain supervisors and agents of the Respondent, as found above, made coercive statements to employees and unlawfully threatened reprisals.

In view of the extensive unfair labor practices in which the Respondent engaged, principally concentrated in the 3-week period following the Union's demand for recognition and offer to prove majority through a card check, I am convinced that the Respondent rejected the request to bargain in bad faith and not because of a good-faith doubt that the Union represented a majority. Indeed, the purpose of the Respondent's antiunion campaign was to destroy whatever support the Union had among the employees and, as Warner's written instructions to the supervisors and key employees charged with accomplishing this result make clear, to insure that "we will have a majority *No Union* vote when the election results are finally posted." I therefore conclude that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to bargain with the Union on July 15 and thereafter.[26]

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[26] *Joy Silk Mills, Inc.*, 85 NLRB 1263, enfd. 185 F. 2d 732 (C.A. D.C.), cert. denied 341 U. S. 914.

IV. The Effect of the Unfair Labor Practices Upon Commerce.

The activities of the Respondent found to constitute unfair labor practices as set forth in section III, above, occurring in connection with the operations of the Respondent described in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy.

Having found that the Respondent has engaged in unfair labor practices violative of Section 8(a)(1) and (5) of the Act, it will be recommended that the Respondent cease and desist therefrom and take appropriate affirmative action, including bargaining upon request with the Union, in order to effectuate the policies of the Act.

REPORTS AND RECOMMENDATIONS AS TO CASES NOS. 8-RC-6028 AND 8-RM-428.

In its Order of November 3, the Board directed, with respect to the representation cases, that a hearing be held "to resolve the issues raised by the Union's Objection No. 2, paragraphs 1 through 6, and 9 through 14." It further found it "unnecessary to reach the merits of Objection 1 at this time" and, with respect to Objection No. 2, paragraphs 7, 8 and 15, adopted the Regional Director's recommendation that these objections be overruled. The issues raised in the Union's objections on which hearing was directed, generally encompass the conduct occurring within the period following the filing of the Union's petition on July 21 and the election on August 6, which I

have in preceding sections of this Decision found to be violative of Section 8(a)(1) and (5) of the Act. In particular is this true of the systematic campaign to identify union adherents and to destroy the Union's majority, which the Respondent pressed with vigor from July 21 until the election on August 6, which conduct is embraced in Objection No. 2, paragraphs 1 through 6. I find that these objections have been sustained to the extent I have heretofore found the Respondent's conduct in connection with the campaign to be violative of the Act. Except for the statement by Supervisor Halstead to Mrs. Murray, that she could take the week of the election for vacation if she did not come in to vote, which I have found to violate Section 8(a)(1) and which is covered in paragraph 10 of Objection 2, the remaining paragraphs (paragraphs 9, and 11 through 14) either were not proved or relate to conduct that occurred prior to the filing of the petition on July 21 and thus cannot form the basis for valid objections.[27] In view of the objections which I find meritorious and my recommendation that the Respondent bargain upon request with the Union because of its unlawful refusal to bargain in violation of Section 8(a)(5), I recommend that the Board sustain the objections to the extent indicated, set aside the election held on August 6, 1965, and dismiss the petitions in Cases Nos. 8-RC-6028 and 8-RM-428.

Upon the basis of the above findings of fact and upon the entire record in these proceedings, I make the following:

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[27] See *Goodyear Tire and Rubber Co.*, 138 NLRB 453.

CONCLUSIONS OF LAW.

1. The Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. All production and maintenance employees employed at the Respondent's Gibsonburg, Ohio, plant, including shipping, receiving, stockroom and tool room employees, truckdrivers, draftsman, and working group leaders, but excluding office clerical employees, time study methods employee, and all guards, professional employees, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. At all times since July 15, 1965, the Union has been the exclusive bargaining representative of the employees in the aforesaid appropriate unit within the meaning of Section 9(a) of the Act.

5. By refusing on and after July 15, 1965, to recognize and bargain collectively with the Union as the exclusive representative of the employees in the aforesaid appropriate unit, the Respondent has engaged and is engaging in unfair labor practices within the meaning of Section 8(a) (5) and (1) of the Act.

6. By unlawfully questioning employees as to their own or fellow employees' union sympathies and leanings, threatening economic reprisals because of union activities, conditioning job advancement upon abandonment or renunciation of union activity, creating the impression of surveillance of union activities, and by promulgating, maintaining and enforcing a no-solicitation and no-distribution rule for discriminatory purposes, the Respondent has engaged and is engaging in unfair labor

practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2(6) and (7) of the Act.

RECOMMENDED ORDER.

Upon the basis of the above findings of fact and conclusions of law, and upon the entire record herein, it is recommended that the National Labor Relations Board, pursuant to Section 10(c) of the National Labor Relations Act, as amended, order that the Respondent, Atlas Engine Works, Inc., Gibsonburg, Ohio, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Teamsters, Chauffeurs, Warehousemen and Helpers Local # 20, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive representative of the employees in the following appropriate unit:

> All production and maintenance employees employed at the Respondent's Gibsonburg, Ohio, plant, including shipping, receiving, stockroom and tool room employees, truckdrivers, draftsman, and working group leaders, but excluding office clerical employees, time study methods employee, and all guards, professional employees, and supervisors as defined in the Act.

(b) Unlawfully questioning employees as to their own or fellow employees' union sympathies and leanings, threatening economic reprisals because of union activities, conditioning job advancement upon abandonment or re-

nunciation of union activity, and creating the impression of surveillance of union activities.

(c) Discriminatorily promulgating or enforcing a rule prohibiting employees from soliciting or distributing literature on behalf of a union, or in any other manner interfering with, restraining, or coercing employees in the exercise of their rights to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Upon request, bargain collectively with the above-named Union as the exclusive representative of all the employees in the unit described above, concerning rates of pay, wages, hours of employment, and other conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Rescind its no-solicitation no-distribution rule posted on July 22, 1965, as it applies to union solicitation or other activities protected by Section 7 of the Act.

(c) Post at its plant in Gibsonburg, Ohio, copies of the notice attached hereto and marked "Appendix."[28] Copies of said notice, to be furnished by the Regional Di-

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[28] In the event that this Recommended Order be adopted by the Board, the words "A DECISION AND ORDER" shall be substituted for the words "THE RECOMMENDED ORDER OF A TRIAL EXAMINER" in the notice. In the further event that the Board's Order be enforced by a decree of a United States Court of Appeals, the words "A DECREE OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER" shall be substituted for the words "A DECISION AND ORDER."

rector for the Eighth Region, shall, after being duly signed by a representative of the Respondent, be posted by the Respondent immediately upon receipt thereof and maintained for a period of 60 consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for the Eighth Region, in writing, within 20 days from the date of receipt of this Decision and Recommended Order, what steps the Respondent has taken to comply herewith.[29]

Dated at Washington, D.C.

IVAR H. PETERSON,
Trial Examiner.

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[29] In the event that this Recommended Order be adopted by the Board, this provision shall be modified to read: "Notify the Regional Director for the Eighth Region, in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith."

APPENDIX.

NOTICE TO ALL EMPLOYEES
PURSUANT TO
The Recommended Order of a Trial Examiner of the
NATIONAL LABOR RELATIONS BOARD
and in order to effectuate the policies of the
NATIONAL LABOR RELATIONS ACT
(As Amended)

we hereby notify our employees that:

WE WILL NOT unlawfully question employees as to their own or fellow employees' union sympathies and leanings, threaten economic reprisals because of union activities, condition job advancement upon abandonment or renunciation of union activity, create the impression that employees' union activities are under surveillance, or in any other manner interfere with, restrain or coerce employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, as amended.

WE WILL rescind our no-solicitation no-distribution rule posted on July 22, 1965, as it applies to union solicitation or other activities protected by Section 7 of the Act.

WE WILL, upon request, bargain collectively with TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL #20, affiliated with INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, as the exclusive representative of all our employees in the bargaining unit described below with respect to rates of pay, wages, hours of employment and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

The bargaining unit is:

All production and maintenance employees at our Gibsonburg, Ohio, plant, including shipping, receiving, stockroom and tool room employees, truckdrivers, draftsman, and working group leaders, but excluding office clerical employees, time study methods employee, and all guards, professional employees and supervisors as defined in the Act.

ATLAS ENGINE WORKS, INC.
(Employer)

Dated _____. By _____
(Representative) (Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 720 Bulkley, 1501 Euclid Avenue, Cleveland, Ohio 44115 (Te. No. 621-4465).

APPENDIX K.

STATUTE INVOLVED.

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*) are as follows:

RIGHTS OF EMPLOYEES.

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a) (3).

UNFAIR LABOR PRACTICES.

Sec. 8 (a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

* * * * *

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a).

* * * * *

REPRESENTATIVES AND ELECTIONS.

Sec. 9 (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes,

shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided,* That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: *Provided further,* That the bargaining representative has been given opportunity to be present at such adjustment.

* * * * *

(c) (1) Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board—

> (A) by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a substantial number of employees (i) wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative defined in section 9(a), or (ii) assert that the individual or labor organization, which has been certified or is being currently recognized by their employer as the bargaining representative, is no longer a representative as defined in section 9(a); or
>
> (B) by an employer, alleging that one or more individuals or labor organizations have presented to him a claim to be recognized as the representative defined in section 9(a);

the Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice. Such hearing may

be conducted by an officer or employee of the regional office, who shall not make any recommendations with respect thereto. If the Board finds upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof.

* * * * *

In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 1486

ATLAS ENGINE WORKS, INC., PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

This case presents the same basic question as that involved in *National Labor Relations Board* v. *American Cable Systems, Inc.*, No. 737, this Term, certiorari denied, 400 U.S. 957, and in *American Art Industries, Inc.* v. *National Labor Relations Board*, No. 995, this Term, certiorari denied, February 22, 1971. The issue is whether the Board may properly disregard the effect of post-election employee turnover in determining whether an employer's pre-election unfair labor practices preclude the holding of a fair representation election and warrant a bargaining order. In *American Cable*, one panel of the Fifth Circuit answered this question negatively (427 F. 2d 446); in

420-611——71

American Art, another panel of that Court answered it affirmatively (415 F. 2d 1223), as did the Sixth Circuit here. See also *G.P.D., Inc.* v. *National Labor Relations Board,* 430 F. 2d 963 (C.A. 6), No. 1169, this Term, certiorari denied, March 22, 1971; *National Labor Relations Board* v. *Stanley Air Tools,* 432 F. 2d 358 (C.A. 6), No. 1403, this Term, pending on petition for a writ of certiorari.

The Board believes that the court of appeals correctly decided this case. See *National Labor Relations Board* v. *Gissel Packing Co.,* 395 U.S. 575, 610–611. Although the Board agrees with petitioner that the decision below conflicts with that of the Fifth Circuit in *American Cable,* that conflict was brought to the Court's attention in *American Cable* (see petition for the National Labor Relations Board, No. 737, this Term, pp. 9, 13). Presumably, the same considerations which led the Court to deny the petition in *American Cable* and the subsequent petitions in *American Art* and *G.P.D.* would also prompt it to deny the petition here. See also *National Labor Relations Board* v. *Clark's Gamble Corp.,* 422 F. 2d 845 (C.A. 6), No. 265, this Term, certiorari denied, 400 U.S. 868.

Accordingly, the petition for a writ of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

ARNOLD ORDMAN,
General Counsel,
National Labor Relations Board.

APRIL 1971.

U.S. GOVERNMENT PRINTING OFFICE: 1971